

Exhibit 2

*BRIAN T. BORDERS vs.
GOODYEAR DUNLOP NA & SUMITOMO RUBBER*

*BRIAN T. BORDERS
January 23, 2019*



METSCHL
AND ASSOCIATES

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1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF NEW YORK

3
4 BRIAN T. BORDERS,

5 Plaintiff,

6 vs Civil Action No. 17-cv 1159

7
8 GOODYEAR DUNLOP NA, SUMITOMO RUBBER,

9 Defendant.
10

11 Examination Before Trial of BRIAN T. BORDERS, held
12 pursuant to the Federal Rules of Civil Procedure, in the
13 law offices of HARTER, SECREST & EMERY, LLP, 50 Fountain
14 Plaza, Suite 1000, Buffalo, New York, on Wednesday,
15 January 23, 2019 at 9:15 a.m. before Molly Fenske, Notary
16 Public.
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1 APPEARANCES:

2
3 LAW OFFICE OF LINDY KORN
4 BY: CHARLES MILLER, ESQ.
5 535 Washington Street, 9th Floor
6 Buffalo, New York 14203
7 cmliller@lkorn-law.com
8 Appearing for the Plaintiff.

9
10 HARTER, SECREST & EMERY, LLP
11 BY: AMY L. HEMENWAY, ESQ.
12 50 Fountain Plaza, Suite 1000
13 Buffalo, New York 14202
14 ahemenway@hselaw.com
15 Appearing for the Defendant.

16
17 SUMITOMO RUBBER USA, LLC
18 BY: AMY MEYER, ESQ.
19 and TIMOTHY RENTSCHLER, ESQ.
20 10 Sheridan Drive
21 Tonawanda, New York 14150
22 amy_meyer@sumitomorubber-usa.com
23 timothy_rentschrer@sumitomorubber-usa.com
24 General counsel and staff counsel for Sumitomo Rubber USA,
25 LLC.

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1 (Whereupon, the following stipulations
2 were entered into by the respective parties:

3 It is hereby stipulated by and between
4 counsel for the respective parties that the oath of
5 the referee is waived, that signing, filing and
6 certification of the transcript are waived, and all
7 objections, except as to the form of the question,
8 are reserved until the time of trial.)

9 THE REPORTER: Ms. Hemenway and Ms.
10 Meyer, you'll split and supply Mr. Miller?

11 MS. HEMENWAY: Yes.

12 MS. MEYER: Yeah, that's fine.

13 MS. HEMENWAY: Actually, you can just --
14 she can just put -- send it all to me.

15 THE REPORTER: So you will supply Mr.
16 Miller?

17 MS. HEMENWAY: Yes.

18 MR. MILLER: Thank you.

19 THE REPORTER: Usual stipulations or read
20 and sign?

21 MR. MILLER: Usual stipulations. I'm
22 good with those.

23 MS. HEMENWAY: That's fine.

24 BRIAN THOMAS BORDERS, 26 Prestonwood
25 Lane, East Amherst, New York 14051, having been duly

1 called and sworn, was examined and testified as
2 follows:

3 MS. HEMENWAY: Good morning, Mr. Borders.
4 My name is Amy Hemenway. I'm an attorney here at
5 Harter, Secrest and Emery. I represent Sumitomo and
6 I'll be conducting your deposition today. We're
7 here so I can ask you questions about your claims in
8 the lawsuit you have against Sumitomo and so
9 throughout the day I'll ask you a series of
10 questions.

11 It's important that we only speak one at
12 a time because the court reporter here is taking
13 down your testimony, so just make sure that I'm
14 finished with my question before you answer and I
15 will do my best to let you complete your answer
16 before I ask my next question.

17 It's also important that you give verbal
18 answers, so a yes or no. If you shake your head or
19 say mmmm, uh-uh, that's hard for the court reporter
20 to take down. She can't take down a non-verbal
21 response, so please make sure you're giving verbal
22 responses, and if I catch it and you don't do so, I
23 may remind you yes or no, and the court reporter may
24 also, from time to time, ask you to give verbal
25 responses.

1 If at any time you don't understand a
2 question that I ask, please ask me to repeat it or
3 rephrase it. I'm happy to do so. If you answer a
4 question that I've asked, I'm going to assume that
5 you understood it.

6 At any point today, if you need to take a
7 break to get some coffee or water or to use the
8 restroom, feel free to ask. The only thing that I
9 would ask is that you finish answering any question
10 that's pending before we take the break. Do you
11 have any questions about those instructions?

12 THE WITNESS: No, ma'am.

13 EXAMINATION BY MS. HEMENWAY:

14 Q. Are you on any medications today that may
15 impact on your ability to give truthful testimony?

16 A. No.

17 Q. So your claims in this lawsuit are brought
18 against Sumitomo and, as I understand it, you were
19 placed at Sumitomo as a contract employee for a period
20 of time; correct?

21 A. That is correct.

22 Q. When were you first placed there?

23 A. It was 2007. I think it was the beginning of
24 April.

25 Q. How did that placement come about?

1 A. I was let go from my previous position at
2 Univera Healthcare and I was looking for a new
3 position.

4 Q. How did you get connected to the position at
5 Sumitomo?

6 A. It was a staffing company. Systems Personnel
7 arranged for the interview.

8 Q. Was there a particular individual that you
9 recall working with at Systems Personnel in arranging
10 that interview?

11 A. I think it was Lynn Baranyi.

12 Q. Did you interview for any other positions
13 through Systems Personnel?

14 A. No, I did not.

15 Q. So you interviewed with someone at Sumitomo
16 then?

17 A. No. It was Goodyear Dunlop Tires North
18 America.

19 Q. Okay. And when you interviewed with -- well,
20 Goodyear Dunlop Tires was the predecessor to Sumitomo;
21 right?

22 A. Could you repeat that?

23 Q. Goodyear Dunlop was the predecessor to
24 Sumitomo?

25 A. It was actually a joint venture at that time

1 between the two companies, but it was primarily listed
2 as just Goodyear Dunlop Tires North America.

3 Q. And then, at some point during the time that
4 you were placed at the Sumitomo site, the joint venture
5 ended and it simply became the Sumitomo site; right?

6 A. Correct.

7 Q. So when you had your interview, do you recall
8 who you interviewed with?

9 A. Yes, the IT manager, Mark Papelow.

10 Q. Was there anyone else present at the
11 interview?

12 A. I can't remember.

13 Q. Was anyone from Systems Personnel present at
14 the interview?

15 A. I can't remember. Sorry.

16 Q. What happened after the interview?

17 A. They hired me on as a contractor with the
18 implication that it was going to be a contract to hire.

19 Q. When you say there was an implication it would
20 be a contract to hire, what led you to that conclusion?

21 A. Well, that's what they were advertising when
22 they brought me in for the interview, that it was a
23 contract position, then to hire, but Goodyear stopped
24 all hiring, they weren't hiring any people, so I just
25 remained on a contract.

1 Q. As a contract employee, how did that work for
2 you?

3 A. I was there at the -- whatever the manager
4 wanted me to do as a unit systems administrator. They
5 told me what to do, when to be there and what to work
6 on.

7 Q. When you say they told me --

8 A. That's the manager, Mark Papelow.

9 Q. When you say you were hired as a contract
10 employee, was that through Systems Personnel?

11 A. Yes.

12 Q. And so was Systems Personnel also your
13 employer at the time?

14 A. Yeah, they would have been, yes.

15 Q. And so what did Systems Personnel do as your
16 employer?

17 A. Basically, they paid me. That's pretty much
18 all the -- most of the interaction I had with them was
19 filing the hours. Dunlop approved it. They paid
20 Systems and Systems paid me.

21 Q. Did you receive any benefits through your
22 employment with Systems Personnel?

23 A. Just, initially, just ten days of vacation and
24 then I was added into the 401(k) program with them and
25 that was it.

1 Q. And the vacation and the 401(k) were through
2 Systems Personnel?

3 A. Yes.

4 Q. Did you receive any vacation or other paid
5 time off through Goodyear or Sumitomo?

6 A. I'm trying to think. They did have some
7 holidays included, but they didn't match up with
8 Goodyear's holidays.

9 Q. So the holidays were through Systems
10 Personnel?

11 A. Yeah. They paid for, I think, just some
12 federal holidays, but Goodyear was open generally more,
13 or they had some other holidays off that I didn't get
14 paid for.

15 Q. Did you receive any paid time off, whether
16 vacation, sick, personal, other, that was covered by
17 Goodyear or Sumitomo?

18 A. No.

19 Q. Did you receive any 401(k) benefits through
20 Goodyear or Sumitomo?

21 A. No.

22 Q. Did you receive any other types of benefits or
23 compensation from Goodyear or Sumitomo?

24 A. I guess the only kind of benefit that I was
25 allowed was the allowance for some flexible time and

1 the ability to bank some hours to backfill sick time
2 when I was out.

3 Q. So can you explain how that worked? When you
4 say you were allowed the ability to flex your time and
5 bank hours, how did that work?

6 A. Yeah. If I had a migraine in the morning, I
7 would generally be able to come in in the afternoon and
8 work -- usually be able to get in like eight hours that
9 day, if I could, later in the evening, and then there
10 were times too, where, if I had worked more than forty
11 hours, I would be able to leave that on the books and
12 backfill that when I was out sick to make up time,
13 because they didn't pay any overtime at all and any
14 overtime would have been paid at straight time.

15 Q. When did that occur? When do you recall the
16 timeframe when you were doing this flexing of time?

17 A. Would have been anytime, probably from not
18 long after I was hired in 2007 all the way up to a
19 little bit into 2014 after Kirk Rawls put a stop to all
20 flex time or anything. He didn't offer any allowances
21 for that were previously authorized.

22 Q. And did that include the backfilling where you
23 would --

24 A. Yes.

25 Q. -- work from time and hold it?

1 A. Yes, it did.

2 Q. That continued up until early 2014?

3 A. I'm not sure if I had anything to backfill at
4 that point because I was out for a month in October
5 when I started with an illness.

6 Q. When you say you were out in October, was that
7 October of 2014 or --

8 A. 2013.

9 Q. So, to your knowledge, did that -- or from
10 your recollection, did that use of time where you would
11 sort of create a sick bank, it sounds that's what you
12 were doing, you created a bank of hours that ended
13 sometime in late 2013?

14 A. Probably. I can't exactly remember. I would
15 have to kind of look at my time log to see what I had.

16 Q. And do you have a time log?

17 A. Yes.

18 Q. When did you prepare the time log?

19 A. Every day.

20 Q. And how did you go about preparing that? Is
21 it in a notebook?

22 A. It's on a spreadsheet.

23 Q. Why did you prepare the spreadsheet?

24 A. Because I needed to do it for my logging of
25 hours on a weekly basis.

1 Q. Did you provide the spreadsheet to anyone?

2 A. May have provided a couple pieces here and
3 there, but they didn't generally want it.

4 Q. When you say they didn't want it, who are you
5 referring to?

6 A. The managers, the people who I reported to.

7 Q. And who was that?

8 A. That would have been Mark Papelow, Kirk Rawls.

9 Q. Since you were placed through Systems
10 Personnel, did you have a designated manager with
11 Systems Personnel that you worked with?

12 A. It would have probably been Lynn Baranyi would
13 have been the main contact.

14 Q. Do you know how to spell her last name?

15 A. No, I do not.

16 Q. And it was -- can you pronounce it one more
17 time?

18 A. Lynn with a B, Baranyi or something. I'm not
19 really sure how to -- I never really talked to her by
20 last name that much.

21 Q. You mentioned that Mr. Rawls ended the flex
22 time arrangement, and you think that was maybe sometime
23 in late 2013, early 2014?

24 A. Yes.

25 Q. To your knowledge, did he allow any employees

1 to have flex time?

2 A. I don't know.

3 Q. Do you recall, prior to that timeframe,
4 whether employees of Sumitomo that you would have
5 observed, or Goodyear at that time, if any of those
6 other employees had flex time arrangements, or would
7 adjust their hours similar to how you had done?

8 A. Well, there was people who worked different
9 hours, but they were generally Goodyear employees.
10 Some people would come in early and leave earlier.
11 Some people would come in a little later and get their
12 time in.

13 Q. So you mentioned Goodyear employees. Just for
14 sake of avoiding confusion, I may refer to Sumitomo,
15 you may refer to Goodyear, but can we agree that they
16 are one in the same? For purposes of reference we can
17 use them interchangeably?

18 A. Yes.

19 MS. MEYER: I think you might have a
20 problem with that, only from the perspective that in
21 October of 2015, when the joint venture ended, there
22 were certain employees that were at the Sumitomo
23 plant now who were Goodyear employees and who went
24 back to Goodyear, so there really was that divide,
25 unfortunately, which gets a little confusing. Some

1 stayed and became Sumitomo employees. Most of those
2 are actually gone now, but there was also -- so it's
3 kind of -- so I think until when you're looking at
4 timeframe, I think you may have to --

5 THE WITNESS: Well, that's what I'm kind
6 of differentiating is with the timeframe of Goodyear
7 versus Sumitomo, but I do understand the reference.

8 BY MS. HEMENWAY:

9 Q. So at the time you were -- you mentioned there
10 were some other employees who seemed to have different
11 work hours, but they were Goodyear employees. How did
12 your placement at the company -- how did your
13 experience being placed at the company differ from the
14 experience of the actual employees that worked directly
15 for Goodyear, as you understood it?

16 A. I don't think it was really any different per
17 se because it was really kind of a flexible, you know,
18 kind of environment. If you came in early you left.
19 As long as you got what you needed to get done you
20 could come in later. It was all kind of based on
21 almost individual personal scheduling. If they had
22 something going on and one of the other contractors who
23 was there was on, I think, a thirty-hour contract.

24 Q. Do you recall that individual's name?

25 A. That would be John Cook. It might have been

1 35, but it was a non-40 contract that he was on because
2 he was also -- he was also working as a part-time -- or
3 I really can't say part-time because he was, I think,
4 doing full-time work as a realtor off hours.

5 Q. Okay. Did your experience change once the
6 joint venture ended and the company transitioned from,
7 you know, a Goodyear Sumitomo plant to a Sumitomo
8 plant?

9 A. No, nothing changed in that perspective. The
10 change took place when the new manager, Kirk Rawls,
11 took over at the end of 2013. If I think correctly,
12 Ms. Meyer can probably -- I think it was 2015 they
13 started the dissolution efforts. Is that...

14 MS. MEYER: It actually started a little
15 before that.

16 THE WITNESS: Okay.

17 BY MS. HEMENWAY:

18 Q. So, you mentioned one of the changes that
19 occurred when Mr. Rawls came in was sort of an end to
20 the flex time arrangement that you had. Were there any
21 other changes that you experienced in your placement
22 when Mr. Rawls took over as manager of the IT area?

23 A. Well, it was really -- I guess it was attitude
24 towards me, that he would make comments that, you know,
25 that I'm out sick a lot, and some of the other comments

1 that he made was that he would say that he needs
2 somebody full-time and then he also had said that maybe
3 I should be looking for part-time work somewhere else.
4 I guess, if I want to expand on that, I know, in
5 reference to John Cook, he did, I think, tell him that
6 he couldn't do some of his realtor stuff anymore. I'm
7 not really sure what the extent of that was, but I know
8 that comment was made, that he didn't want him to be
9 taking as many calls or whatever, during work or
10 whatever.

11 Q. To your knowledge, did Mr. Cook have any
12 disabilities that impacted on his ability to perform
13 his work?

14 A. The only one that I know of, he has some
15 issues with medical treatment.

16 Q. What are those issues?

17 A. I guess the thing that I could put on, and I
18 guess kind of being like high-strung. He got really
19 stressed out with medical, certain medical procedures.

20 Q. Okay. Do you know if he needed to miss work
21 in order to or because of a disability?

22 A. Well, he would have to, I'm trying to think,
23 take some extended time for his appointments because he
24 had to take some medication prior to some appointments.

25 Q. Do you have any idea how frequently that

1 occurred?

2 A. No. I can't really remember at this time.
3 Maybe, given a little time, I might be able to, but I
4 wouldn't --

5 Q. But you do recall learning that Mr. Rawls had
6 told Mr. Cook he couldn't do his realtor stuff on the
7 clock anymore?

8 A. Yeah, I believe so, and then, because he was
9 really wanting to push Mr. Cook into a 40-hour work
10 week, and then they ended up hiring him there as a
11 full-time employee. That would have been after the
12 transition to Sumitomo because they wanted to convert
13 all the contractors to employees.

14 Q. Did you have any discussions with anyone, and
15 this would have been with Sumitomo, right, about
16 converting from contractor status to a permanent
17 employee status?

18 A. No, I didn't really talk to anybody about
19 that. It was just mentioned that the focus was to
20 convert people from contracts to permanent positions.

21 Q. And you said it was mentioned that was a
22 focus. How did you come to understand that was the
23 focus?

24 A. That was, I believe, in one of the weekly
25 meetings with Mr. Rawls with the team.

1 Q. You mentioned that Mr. Cook was a contract
2 employee. Were there other contract employees in the
3 IT area during the time that you were placed at
4 Sumitomo?

5 A. Yes.

6 Q. Who were those individuals?

7 A. There was a Paul Grabowski and a Mike
8 Adamitis. Brian Keogh was brought on as a contractor
9 before they converted him to full-time, and I'm trying
10 to think if there was any others, but I can't think of
11 any others at this time. I'm sorry.

12 Q. You mentioned Paul Grabowski.

13 A. Grabowski.

14 Q. Do you know if Mr. Grabowski was also placed
15 through Systems Personnel?

16 A. No, I do not.

17 Q. What about Mike Adamitis?

18 A. I don't know who he was through.

19 Q. Mr. Cook?

20 A. He mentioned it, but I can't think of who it
21 was. I think Mr. Grabowski was through Global Quest,
22 but I...

23 Q. What about Mr. Keogh? Was that his last name?

24 A. Brian Keogh.

25 Q. Oh, Keogh. Okay.

1 A. I don't remember who he was with, but he was
2 with somebody else.

3 Q. And you mentioned Mr. Grabowski. Did he
4 become a full-time employee?

5 A. No, he was -- head count was cut under
6 Goodyear. He was released.

7 Q. What about Mr. Adamitis?

8 A. Kirk Rawls ended up terminating his contract
9 before he went out on medical leave for back surgery.

10 Q. And what was Mr. Adamitis' role? What did his
11 placement relate to?

12 A. He worked on the -- I think it was Lawson. It
13 was the Lawson system for payroll and financials.

14 Q. What about Mr. Grabowski?

15 A. He was a desktop support person.

16 Q. You say that Mr. Rawls terminated Mr.
17 Adamitis' contract before he took some leave for back
18 surgery. What led you to believe that was the reason
19 for terminating his contract?

20 A. Well, I don't know if that was the reason. It
21 was just -- he was getting ready to go out on back
22 surgery and he was planning on coming back, but Mr.
23 Rawls terminated his contract before he was going out
24 on his surgery.

25 Q. Now, when you had -- with respect to your

1 contract through Systems Personnel, was that a contract
2 for any specific period of time?

3 A. Like I said at the beginning, it was supposed
4 to be a contract to hire and then it was just a
5 constant extension.

6 Q. So, when you say it was a constant extension,
7 were there defined periods of time that?

8 A. Not that I was aware of. As far as I know, it
9 was an ongoing purchase order request every year.

10 Q. If Systems Personnel had wanted to move you to
11 a different site or a different type of position, could
12 they have done that?

13 A. I guess they could have offered me to go
14 somewhere else, but there wasn't any active request by
15 me or that I got from them to say we want to move you
16 to a different position.

17 Q. And if, to your understanding, if Goodyear or
18 Sumitomo had wanted to request for Systems Personnel to
19 send a different person to serve in that unit
20 administrator role, could they have done that?

21 A. I don't see why they couldn't have. New York,
22 being an at-will work state, there's no guarantee of
23 anything, even if you're a full-time employee.

24 Q. What was Mr. Cook's role in his placement?

25 A. He was a Windows administrator and networking

1 on the Windows side.

2 Q. And you mentioned that he was hired on
3 permanently?

4 A. Yes.

5 Q. Do you know when that occurred?

6 A. I don't know the exact date. All I know is
7 when Sumitomo was the company then.

8 Q. What about Mr. Keogh, what was his role as
9 a --

10 A. He was a desktop support, a general IT
11 support.

12 Q. Do you know if he was hired on as a regular
13 employee at any point in time?

14 A. Yes, he was.

15 Q. Do you recall when that occurred?

16 A. No, I do not. I believe he was a contractor
17 for maybe six months.

18 Q. How is it that your placement through Systems
19 Personnel at Sumitomo came to an end?

20 A. Can you start that over? You were ruffling
21 the papers and I couldn't...

22 Q. Sorry. How is it that your placement at
23 Sumitomo through Systems Personnel came to an end?

24 A. That was in October of 2016. I was called up
25 for a meeting with Mr. Rawls and a Systems Personnel

1 representative was there. I think it was Jack Hayes
2 and Jeff Jensen. And I was informed at that time that
3 the contract was not going to be renewed at the end of
4 -- after the end of 2016.

5 Q. Who's Jeff Jensen?

6 A. He's a manager of the software side of the
7 group.

8 Q. Was he employed by Sumitomo or Systems
9 Personnel?

10 A. Sumitomo.

11 Q. And Jack Hayes?

12 A. He's the Systems Personnel manager.

13 Q. Did you have any understanding of why Mr.
14 Hayes was at the meeting where you were informed that
15 your contract would not be renewed?

16 A. Can you ask that again?

17 Q. Do you have any understanding of why Mr. Hayes
18 was present at the meeting when you were informed your
19 contract would not be renewed?

20 A. Generally, whenever we had a meeting review
21 with Mr. Rawls -- but it wasn't really that I knew of
22 was going to be a review, so I had no idea that Mr.
23 Hayes was going to be there. I thought it was just
24 going to be another talk with Mr. Rawls, like it was in
25 September.

1 Q. When you say you had a talk with Mr. Rawls in
2 September, you're talking about September of 2016?

3 A. Yes.

4 Q. What was that talk?

5 A. He had basically said that I needed to improve
6 on attendance or something like that, and, if it didn't
7 improve, he wasn't going to renew the contract.

8 Q. During the discussion in October of 2016 with
9 Mr. Rawls, yourself, Mr. Hayes and Mr. Jensen, was
10 there any discussion about what would happen at the end
11 of 2016 when the position was not renewed?
12 Specifically, was there any discussion about
13 opportunities, other opportunities for you, whether at
14 Sumitomo or elsewhere?

15 A. Not at that meeting, no, there wasn't. There
16 was discussion later on.

17 Q. When did that later discussion occur?

18 A. I don't know the exact date or time, but it
19 was probably end of November-December timeframe. He
20 had said that he was opening up another position for
21 desktop support and that I would be able to apply for
22 it, and then he also emphasized again that he needed
23 somebody who was going to be -- he needed a 40-hour
24 employee, and then he stated about how much the pay
25 would be, somewhere, fifty to fifty-five K, because he

1 constantly, whenever he had the opportunity, I guess,
2 he would say that, you know, he would always still
3 bring up my absences for my disability and he would
4 always kind of bring that up, saying I was out sick a
5 lot.

6 Q. How much were you earning from Systems
7 Personnel during the time you were placed at Goodyear
8 and Sumitomo?

9 A. I think -- I believe it was 34.70 an hour.

10 Q. Do you have a recollection of approximately
11 how much that equaled per year?

12 A. I think the rough estimate, that would be like
13 68 to 69,000 a year. I think it's usually double the
14 hourly rate to get an annual.

15 Q. But you think it was around 34.70 per hour?

16 A. I'm pretty sure that's what it was.

17 Q. How many hours per week did you typically
18 work?

19 A. Well, typical would be to do the forty hours.
20 If I had a migraine, it could be that I would be out
21 four hours in the morning and then take some medication
22 and be able to be in around -- tried to be in around
23 noon or by one o'clock, to be able to get four to five
24 hours in.

25 Q. How frequently were you absent as a result of

1 migraines?

2 A. Could be as many as two, two times a week.
3 Sometimes none. Maybe up to four or five times a
4 month. But all that would generally be in the -- my
5 time log would show my absences. I guess, let me add
6 on to the typical hours. There was a period when my
7 hours were reduced to thirty hours a week.

8 Q. How did that come about?

9 A. That came about in a review in 2014. I was
10 under, I guess, a lot of self-imposed duress to the
11 fact of with Kirk, Mr. Rawls, stating that I was being
12 out sick a lot. I was -- there was a time period there
13 where I was just not taking any time and constantly
14 working through problems with the migraines, not
15 feeling well and not really working at my best ability,
16 so, after a period of time, I made an appointment to
17 talk to -- went to a law firm of Hogan & Willig to get
18 some information on employment advice, and they stated
19 that --

20 Q. I'm going to -- did you formally retain Hogan
21 & Willig --

22 A. No, I did not.

23 Q. -- as your attorney? Okay. I don't need to
24 know about the advice that they gave you. I don't want
25 to, whether it's privileged or not, I think we could --

1 there's a question, so I don't want to delve into that,
2 so don't tell me about what they discussed with you,
3 but you said you were under some self-imposed duress
4 because you weren't taking time and you weren't feeling
5 well so you weren't working to the best of your
6 ability. Did you, in order to address it, did you
7 request to work a reduced schedule?

8 A. No. I had -- the advice that I got from
9 Hogan & Willig was to go to Goodyear at the time and
10 request to be -- to fill out the forms to use the
11 Family Medical Leave Act, and with the person in HR,
12 Linda Walleshauser, and that's discussing with her
13 about my situation about not feeling well and being
14 able to need to take some time, and when I brought up
15 FMLA, Family Medical Leave Act, she said, oh, you don't
16 need to do that, and we know that you have disabilities
17 for the migraines, and she refused to allow me to fill
18 out the paperwork for that program, and not long after
19 that there was a review with Mr. Rawls, and Linda
20 Walleshauser was there, and everything that I discussed
21 with her Kirk brought up as supposedly his observations
22 of my work and then reduced my hours to thirty hours
23 per week because his statement was, you're not here
24 forty all the time anyway, so we'll -- I'm going to
25 reduce your hours to thirty and we'll see if you can do

1 thirty, and then there was also the understanding that
2 he made that, if I was available for more, that the
3 hours would be given to work more than thirty, and I
4 actually ended up working thirty-two per week because
5 for the most part, because that was four eight hour
6 days was thirty-two. He didn't seem to worry about
7 that. And then, when I would ask him about me coming
8 in on the Friday to do the extra eight hours, it was
9 usually a no, and then I finally stopped asking.

10 Q. When you had the meeting with Mr. Rawls and
11 Ms. Walleshauser, was anyone else present?

12 A. I believe Jeff Jensen was there.

13 Q. Was anyone from Systems Personnel present?

14 A. I can't remember. There may have been, but I
15 can't. Maybe Mr. Hayes was there, Jack Hayes, but I
16 can't really remember. Probably, there probably was.

17 Q. When you went to speak with Ms. Walleshauser
18 about needing some time, I guess it would be time off,
19 and you were asking about the FMLA, was there a
20 specific amount of time that you were seeking to be out
21 or --

22 A. No. Sorry about starting too quickly.

23 Q. That's fine.

24 A. No. It was just the ability to use the FMLA
25 as the, I guess you would say the backstop of being

1 able to use the FMLA portion of the federal law as a
2 day here or there for my migraines. Instead of just
3 being out for the migraines I would use the FMLA as a
4 day for the migraines absence, because it's all
5 considered, I believe, unpaid time anyway with the
6 FMLA.

7 Q. Did Ms. Walleshauser give any reason for why
8 you didn't need to fill out the FMLA paperwork?

9 A. Linda Walleshauser basically said that
10 everybody at Dunlop knows that I have a disability.
11 They know I'm a disabled veteran. And I had also
12 filled out the paperwork at their request with the --
13 because I guess there's a federal form that you fill
14 out as if you're a protected veteran status and they
15 have you fill that out for Dunlop so they would have
16 the credit of saying that they're hiring a disabled
17 veteran, I guess. I don't really know how that all
18 works, but I filled out a form that said, yes, I'm a
19 veteran disability and signed it for them.

20 Q. Was that at the time you were initially placed
21 with Goodyear?

22 A. No. That was several years after that came
23 about. They just asked if there's any veterans who
24 they wanted us to get on record that they were working
25 for Dunlop because I had specifically asked that, you

1 know, I'm a contractor, does this still apply, and they
2 said just to fill it out.

3 Q. You said you asked if you needed to fill it
4 out because you were a contractor. In your mind, did
5 your status as a contractor impact the types of
6 benefits you were entitled to from Goodyear or
7 Sumitomo?

8 A. I'm trying to think. I don't get any benefits
9 wise from Sumitomo or Dunlop, but they were having me
10 fill out a form that was being registered with the
11 federal government and I'm signing it and I don't want
12 to sign something inadvertently that would get me in
13 trouble with federal law, kind of thing. So that's why
14 I had asked that question about I'm not really a
15 physical employee of Dunlop filling out that form. So
16 that was the question why I had asked that. But every
17 other aspect of what I knew or what I had read online
18 or looked up and got confirmation when I went and
19 talked to Hogan & Willig was, even though I'm a
20 contractor, I am still considered basically a de facto
21 employee of the company I'm contracted to.

22 Q. At any point in time did you approach Systems
23 Personnel about filling out a request for family
24 medical leave?

25 A. On the advice from Hogan & Willig they said

1 take it directly to Goodyear at the time because they
2 were the ones who I would be taking the absence from,
3 requesting the absence from, was from their site,
4 working directly for them.

5 Q. But when Ms. Walleshauser said you don't need
6 to fill out paperwork here, you didn't go to Systems
7 Personnel --

8 A. No, I did not.

9 Q. -- and check with them at any point in time?
10 During the time that you were reduced to thirty hours
11 per week, did you have a set schedule that you worked
12 or did it flex?

13 A. Well, it would be thirty hours through the
14 week. If I was out sick a day earlier in the week then
15 it didn't matter what four days I worked, but it was --
16 I guess the implication was that it would be Monday
17 through Friday, four days.

18 Q. And did you have the flexibility yourself to
19 determine which four days you would work in a
20 particular week, subject --

21 A. It would all be based on if I had a migraine
22 or not.

23 Q. When did you first start to experience
24 migraines?

25 A. My earliest recollection was after November of

1 1985.

2 Q. And, if we focus in on the timeframe that you
3 worked or you were placed at Goodyear and Sumitomo, how
4 frequently did you experience migraines and, if it
5 changed over that period of time, let's parse it out.

6 A. From what I've kind of been able to ascertain
7 on my migraines is they seem to revolve around changes
8 in weather, so it's hard, because we went through
9 several doctors with, even at the Dent Neurologic
10 clinic, about trying to determine if I had any
11 triggers, and we couldn't determine if I had any
12 triggers because, you know, they say nitrates and other
13 kinds of stuff, you know, like processed meats, nuts,
14 all the kind of normal things, and I would eat a lot of
15 that stuff and it didn't trigger a migraine, and we
16 also tried pretty much every medication on the planet
17 to try and stop them and none of them seemed to really
18 work, so I stopped taking all those pharmaceuticals
19 because they didn't seem to really be doing me any
20 benefit, and that was also brought up in 2007 that I
21 was, I had the ability to use oxycodone for the
22 migraines for a while until they stopped, all that
23 because of the opioid mess where they said there's no
24 real benefit, we're afraid you're going to get
25 addicted, and my response to that was, you give me 20

1 pills, they last a year, but they were still not going
2 to give them to me anymore at the VA, and I had brought
3 up that I was on oxycodone and the 27 -- 2007 interview
4 because there was a drug test involved. I wanted to
5 let them know that I was taking a narcotic, that I had
6 issues with migraines, and that didn't seem to be a
7 problem because they hired me for the contract.

8 Q. When did you stop using the oxy?

9 A. I don't know the exact timeframe.

10 Q. Okay.

11 A. It would have been -- it was before -- it
12 would have been before 2012 because 2012 was -- the end
13 of 2012 was the last time I went to the VA.

14 Q. So the end of 2012?

15 A. Would have been before that because I'm not
16 sure exactly when they stopped, but I got deathly ill
17 in July of 2012 and didn't go back to the VA after
18 that.

19 Q. Okay. Did you continue medical treatment
20 somewhere else after the end of 2012?

21 A. Yeah. I just went to my regular general
22 practicing doctor. Because I'm a disabled vet, rated
23 at 80 percent, if I go to the VA everything is covered
24 one hundred percent. If I am -- I retired army so I
25 can go anywhere.

1 Q. The Tricare?

2 A. Yeah, exactly.

3 Q. During the time that you were placed at
4 Goodyear and Sumitomo, were you receiving medical
5 treatment for migraines, specifically?

6 A. Yes.

7 Q. And what period of time -- was there a
8 specific period of time or was it ongoing through the
9 placement?

10 A. It's pretty much ongoing until the one point
11 where it was like, well, I'm not really getting any
12 benefit of any of this and I haven't -- I'm not sure
13 when I stopped going to Dent for it, but what I use now
14 is, I take the Excedrin Migraine and that seems to work
15 pretty well. The only drawback is it has a lot of
16 aspirin in it, which prevents getting a lot of things
17 done because your blood is too thin.

18 Q. So you said at some point you stopped going to
19 Dent?

20 A. Yes.

21 Q. Do you have any recollection of when that
22 might be, or can you pinpoint it in any manner?

23 A. I can't remember on that one. Given some
24 time, I might be able to narrow it down, but...

25 Q. Did you continue going to Dent after you

1 stopped going to the VA?

2 A. I think it all stopped before 2012 when I got
3 to a point where the medications that we're trying
4 didn't seem to be doing anything for me so I really
5 didn't see the value of going and paying the money.

6 Q. During the time that you were treating with
7 Dent, were you seeing the same regular doctor?

8 A. Yeah. I was seeing Dr. Mechtler.

9 Q. How do you spell that last name?

10 A. I have no idea, sorry. But he's the main guy.
11 You see him on the news all the time.

12 Q. And that's your regular doctor?

13 A. That's who the -- no, that's the doctor at
14 Dent. My regular doctor is Dr. Heyden. I think it's
15 H-E-Y-D-A-N. It's either an A or an E.

16 Q. Okay. And during the time that you were
17 seeing Dr. Mechtler, were you also seeing Dr. Heyden?

18 A. Well, Dr. Heyden would be my general doctor
19 and Dr. Mechtler would be a specialist, so I can --

20 Q. Sometimes people switch primary doctors so I'm
21 just trying to pinpoint if, for example, you were
22 seeing Dr. Mechtler and he was sending reports, would
23 they have gone to Dr. Heyden?

24 A. Yes. All my medical records would be at Dr.
25 Heyden. I tried getting some stuff sent from the VA,

1 but the VA doesn't send them to anybody. I have to
2 physically go get them and take them. It's too much
3 trouble.

4 Q. So, after we think, maybe sometime in 2012,
5 perhaps before 2012, you stopped going to Dent and you
6 were only treating with your regular doctor, Dr.
7 Heyden; right?

8 A. Yes.

9 Q. Did you see Dr. Heyden to receive treatment
10 for migraines?

11 A. Not specifically. I did ask if he could write
12 a prescription for the oxycodone, which he didn't
13 write. So I would -- my alternate option, that the VA
14 wasn't happy with when I told them when they were
15 stopping the oxycodone, was two to four ounces of
16 vodka, and they didn't like that, saying I was
17 self-medicating, and I said, well, you're not giving me
18 much of a choice, but that doesn't -- I don't use that
19 very often. A lot of times, to elaborate on that, if I
20 have a really bad migraine and the Excedrin or whatever
21 doesn't work, I'll end up at the MASH Urgent Care or
22 possibly Immediate Care, whoever is open, to get a shot
23 of Toradol, which generally takes care of it in 15 to
24 30 minutes.

25 Q. When Mr. Rawls started, it sounds like it was

1 around 2012, 2013; is that correct? I'm sorry, 2013.
2 October of 2013 you thought maybe he started and at
3 that time he ended the flex time arrangement. Did you
4 have a conversation with him about that?

5 A. No. He just said that I couldn't do it
6 anymore.

7 Q. Did he give any reason why?

8 A. No.

9 Q. Did you ask for any reason?

10 A. I can't remember at this time.

11 Q. Did you ever apply for any full-time positions
12 at Goodyear or Sumitomo during the time that you were
13 placed there as a contractor?

14 A. I just want to -- there was two positions that
15 I applied for. There was a network engineering
16 position that opened up and it came back and said that
17 I was unqualified for that position. It was --
18 ultimately, Brian Keogh moved into that position,
19 although I feel I was much more qualified than he was.
20 He was moved into that. And the other position I
21 applied for was that desktop generalist support that
22 Mr. Rawls offered to me to say he was going to be
23 opening up this position. It was my understanding at
24 that time that he was hiring around an additional
25 desktop support person because it wasn't released yet

1 that Brian Keogh was moving to the network side, so I
2 thought, oh, they're expanding the desktop side, so it
3 wouldn't be as stressful, moving from Unix
4 administration Linux over to Windows side. I would
5 have a little more support with three guys doing it,
6 generally three to four as opposed to just two of the
7 main, because Carey Dewer was there. He was kind of on
8 the desktop team, but he was really kind of the main
9 help desk answer guy there.

10 Q. Okay. So do you recall when you applied for
11 the network engineer position?

12 A. It might have been in November. It was after
13 they informed that the contract was terminated.

14 Q. So November of 2016?

15 A. Yeah, because they had hired a network
16 engineer to work with John McClain, the other network
17 engineer, and then they had opened up a position for
18 operations, I think it was operations support manager,
19 something that -- Adrian went by AJ, but I think it was
20 Adrian Franzzyck moved into that position opening, the
21 network support role for applications.

22 Q. So, when you applied for the network engineer
23 position, what form did that application take?

24 A. It was online, through the online portal with
25 Sumitomo.

1 Q. Were you interviewed for the position?

2 A. No, I was not. I was sent an E-mail from HR
3 saying I was not qualified.

4 Q. Did you follow up with anyone to ask about why
5 you were deemed unqualified?

6 A. No, because it was still -- it was hard to
7 talk to Mr. Rawls and get things, you know, because it
8 was kind of like, always seemed like an adversarial
9 conversation with him all the time. If you asked him a
10 question, he would generally say, I never said that, or
11 he would say, this is what I said. So he was always
12 kind of like a hard person to go and talk to.

13 Q. Do you know whether any of the other
14 individuals in the IT area had similar experiences with
15 Mr. Rawls and they found him adversarial or difficult
16 to talk to?

17 A. It was pretty much everybody, and there were a
18 lot of times when he would, as a group or
19 semi-individually, say, if you can't get it done, I'll
20 bring in a whole new group. It was constant threats
21 about being fired by him.

22 Q. And you witnessed that occurring --

23 A. Yes.

24 Q. -- with others in the area?

25 A. Yes.

1 Q. Are there any specific instances of that that
2 you can recall particular employees or situations that
3 you witnessed?

4 A. I think he pretty much said it to almost
5 everybody who was working there.

6 Q. And when you say he said it to pretty much
7 everyone, are you referring to threatening to fire?

8 A. Fire, yeah.

9 Q. Let's talk about the desktop generalist
10 position. You said that was a position recommended by
11 Mr. Rawls; right?

12 A. Yes.

13 Q. And so did you apply for that through the
14 online portal as well?

15 A. Yes, I did.

16 Q. And so what happened after you applied to that
17 position?

18 A. An interview was scheduled for, I believe
19 January 3rd, the week -- maybe it wasn't January 3rd,
20 but it was the first week after the new year to come
21 back for an interview.

22 Q. And did you have that interview?

23 A. No, I did not.

24 Q. Why not?

25 A. Because there was another confrontation with

1 Mr. Rawls about a failed system, that he was basically
2 blaming me for the failed system and it was not a
3 system that I no longer managed or had anything longer
4 to do with.

5 Q. So how did that influence your decision
6 relative to the interview?

7 A. Well, he was berating me again and, about
8 that, I had left the night the system failed late in
9 the afternoon, and the other person who was my
10 replacement and John Cook were working on trying to
11 restore that system from VMware from a backup, and when
12 we came back it still didn't work. I wasn't the
13 application person. I was just involved with the
14 initial installation of that software on a Windows
15 platform. After an upgrade was completed, I think it
16 might have been in 2015, but I can't remember, the
17 whole thing was transitioned over to John Cook and
18 under VMware control, because he was the VMware
19 administrator, so it was all his responsibility and
20 then the system failed. They were trying to get it
21 back. I was -- the only real thing I had was, I had an
22 idea of how the application worked. It was called
23 Interpage. It was for sending out pages, site-wide
24 paging to site pagers, and when I went to test it I
25 realized that it wasn't working, all the names were

1 gone, so we had them do a restore. All the names were
2 gone. What it turned out is that the system had failed
3 a long time ago. It ran out of disc space. So when
4 somebody went in and modified the paging table, it
5 cleared the on-disc reference. The stuff was still in
6 memory because it was RAM, but as soon as the system
7 failed, that file that couldn't write was empty so it
8 couldn't bring anything back. I didn't know how that
9 worked at the time, but that's what we found out in the
10 aftermath and he was -- he had talked to the other guy
11 who was hired to end up being, replacing me, Robert
12 Dege, about why did he leave at seven something in the
13 evening when he should have stayed all night until the
14 system was fixed but, when we left, they were doing
15 another restore. He was going to check on it later
16 from home through VPN access and see if it was working.
17 There was really nothing I could do because I had no
18 access to VMware to do any of this. I was just there,
19 basically, because I had knowledge of the application.
20 So as he was berating me, he then said, tell me why I
21 should bring you back, and he said that a couple of
22 times, and I just said cancel the interview because I
23 had enough of being berated and belittled and
24 constantly told that, for the most part, I was not
25 worth having around because I had issues with migraines

1 and being out sick, and it just came to a point at that
2 thing, and the other observation I made about Mr.
3 Rawls, that I had said earlier about where he would say
4 I never said that or I said this and you would think
5 that, okay, maybe he forgets stuff, but when he was
6 berating Robert Dege at the time, he -- I think the
7 interview was in June, and in December it appeared that
8 Mr. Rawls had total recall of the interview with Robert
9 Dege, basically saying on how things were to work, that
10 if something is broke you don't leave until it's fixed,
11 and went through that in pretty explicit detail, that
12 he remembered it perfectly, that interview, and Mr.
13 Dege responded, yes, he remembered the interview and
14 the transaction of the whole thing. He didn't question
15 anything that Mr. Rawls said was incorrect or anything,
16 so it's -- that was another thing that I picked up on
17 and said to myself that, okay, this guy is a guy that I
18 really can't trust anymore. That was another thing
19 that was leading me to saying I don't need to work for
20 him anymore, to come back and be constantly berated on
21 at least a weekly basis.

22 Q. So, at the time of this incident, it sounds
23 like it was maybe in December of 2016?

24 A. Yeah, it was at the very end of December.

25 Q. He was berating you, but he was also, it

1 sounds like, berating Mr. Dege?

2 A. Yes.

3 Q. Who was also associated with all of that;
4 right?

5 A. Correct.

6 Q. Okay. And what about Mr. Cook?

7 A. He wasn't there.

8 Q. Okay. So you decided to cancel that
9 interview. What about, you said Mr. Dege came in and
10 replaced you or took over the Unix function; is that
11 correct?

12 A. I wasn't really sure that it was replacement
13 at the time because in, I think it was May, and
14 whatever, our meetings, after we completed the AS/400
15 project that I was in charge of, he had mentioned that
16 he was putting out a req to hire an AS/400
17 administrator.

18 Q. When you say he mentioned he was putting out a
19 req, are you referring to Mr. Rawls?

20 A. What was that?

21 Q. When you say he mentioned putting out a
22 requisition, were you referring to Mr. Rawls mentioned
23 that?

24 A. Yes. And, when the job was posted, it was
25 posted as a Unix/Linux systems administrator and I

1 looked through all the requirements for it. It did
2 have -- it had a lot of stuff that I didn't know. It
3 had a lot of Windows stuff on there. It had --
4 basically the job title was -- or the title was Unix --
5 was Linux/Unix administrator, something like that, and
6 all the duties and responsibilities seemed like a
7 combination of what I did and Mr. Cook did and they
8 also had the requirement of a bachelor's degree, which
9 I did not have. It looked like from that requisition
10 he was taking a bunch of needs that he had and put it
11 in to create another position, an additional position
12 that was going to bridge the knowledge between myself
13 and Mr. Cook to have a third person to be able to cover
14 both sides of the environment. So that's what I had
15 looked at when I saw it, but with that degree on there
16 that said a requirement, I was -- I couldn't even apply
17 for that because I didn't meet the basic requirements
18 for the position.

19 Q. Did you talk to anyone about whether your
20 experience could be a substitute for the degree
21 requirement?

22 A. No, I did not.

23 Q. So what happened? You didn't apply or, I'm
24 sorry, you canceled the interview for the desktop
25 generalist position. I assume your contract ended at

1 the end of December 2016. What have you been doing
2 since?

3 A. I filed for unemployment and I was actively
4 looking for jobs that there weren't any, and all of the
5 jobs that were listed for what I did, all had the
6 stipulation of a required bachelor's degree, so what I
7 ended up doing is kind of shifting my prospects a
8 little bit and applied for the New York State SEAP
9 program, which is the Self-Employment Assistance
10 Program, because in 2016 I had come up with an idea and
11 I was working on getting that patented and that's where
12 I was going down the business side to be able to take
13 advantage of that patent and open up a business to
14 pursue selling that idea. I was still, I was still
15 looking for positions, but it was still limited on that
16 degree requirement, but the shifting over to working on
17 the self-employment side, there was no requirement that
18 I have to keep reporting that I'm looking for a job. I
19 was actively working on the business preparation side,
20 going to all the classes and learning a lot about how
21 to start a business. I opened an LLC and the patent
22 just got approved December of last year so I'm still
23 working on that and I was looking for a job in, I think
24 it was June or July of 2017, I had applied for a
25 position at M&T Bank, did a phone interview, and that

1 was the end of it and then, towards the end of 2017, I
2 had gotten word from Tech Systems that there was a
3 possible position available with a defense contractor
4 so I interviewed for that position and was brought in
5 as a contractor for that company.

6 Q. Okay. So --

7 A. I know it was a little wordy.

8 Q. That's okay. I just want to break it down.
9 So during 2017 you -- it sounds like you started your
10 own self-employment, your own business at that point in
11 time. What was the name of that business?

12 A. It's SSBC Arms, LLC.

13 Q. And what's the nature of that business?

14 A. Firearms. The patent that I came up with was
15 a modified part for the AR-15 platform firearms, to
16 convert them from semiautomatic operation to single
17 shot operation, so that's what my thing was is a single
18 shot bull catch for SSBC, so that's the premise around
19 that whole thing. I haven't made any money yet. It's
20 all been outgoing money on this whole patent and
21 everything, but hopefully soon I'll be able to start
22 selling the part under my patent.

23 Q. And then, so during that timeframe you had a
24 phone interview with M&T Bank?

25 A. Yes.

1 Q. And you said that was in June or July of 2017?

2 A. I believe so, yes.

3 Q. Did you have any other interviews or
4 screenings between the time you left your placement
5 with Sumitomo up through June or July of 2017?

6 A. That was the only one. I was looking and I
7 was filling out the online applications for several
8 companies, but none of them really got back to me for
9 any other contact, other than saying they received it,
10 it's under review, or after that it was they weren't
11 interested.

12 Q. Did you work with any recruiters or temporary
13 agencies in an effort to secure employment after your
14 placement ended?

15 A. It was Tech Systems. I had contacted them, I
16 believe it was in October, after I was notified that
17 the contract was canceled.

18 Q. Did you attempt to seek any further placement
19 through Systems Personnel?

20 A. No, I did not. There was nothing available.
21 I had -- they knew I was looking and there was nothing
22 that came up that was in my skill set.

23 Q. So you said the end of 2017 Tech Systems
24 linked you up with a defense contractor and you started
25 working there as a contract employee?

1 A. Yes.

2 Q. What's your rate of pay in that position?

3 A. I think it's 42 an hour.

4 Q. Is it full-time forty hours per week?

5 A. Yes, and they allow the flex time. Well, not
6 necessarily, I guess you would call it flex time,
7 because I can work more than eight hours a day, so I
8 could have more hours logged during the week. So if
9 I'm out some, I would still have the opportunity to
10 make forty hours a week with respect to the flex time
11 with them. No saving of hours because everything with
12 the defense is billed on six minute intervals so
13 everything is specifically logged against the specific
14 project that you're working on that. It's really
15 tracked strictly because of defense contracting.

16 Q. So when you talk about flex time as it related
17 to your time, the time of your placement at Goodyear
18 and Sumitomo, what did you consider that flex time to
19 be? How did you personally envision it or define it?

20 A. Well, Mr. Papelow allowed me to work to make
21 up time in the evening where if I was out in the
22 morning I could come in at noon and the ability to work
23 until eight p.m. to make eight hours, or, if I ended up
24 having more hours during the week with him than forty,
25 I could save those hours for a different time period,

1 so he allowed me the flexibility to work around issues
2 with my migraines, and I had also put out there, as I
3 always do, if there's something you really need call me
4 and I'll see what I can do for you. I never said, if
5 I'm out don't call me, because I know how the nature of
6 the business works. If they need you, they contact
7 you. They gave us VPN access to be able to access the
8 systems from home, if need be, to do things, which was
9 convenient. I then added the additional request that
10 they give me a notebook, a notebook from the company
11 just on the -- because I go, well, if my PC breaks it's
12 broken. I may not get it fixed. If you need me, I
13 can't get in. If you give me a notebook. It came
14 around in the 2013 timeframe after Mr. Papelow left. I
15 was going away on vacation for a week and I requested a
16 notebook to say, if you need me I'll have your notebook
17 to be able to get into the systems, and I had kept it
18 throughout until the end for that purpose guaranteed
19 that it's a company asset. If it's broke, I take it to
20 them. They give me another one.

21 Q. And that was Mr. Rawls approved?

22 A. No. That was approved by Jeff Jensen and John
23 McClain in the interim when Mr. Papelow retired and Mr.
24 Rawls started, but he knew I had it and he allowed it
25 to stay in my possession because I also had a desktop

1 computer too.

2 Q. So during the time that you were working on
3 setting up SSBC Arms, you said you were taking some
4 classes; right?

5 A. Yes.

6 Q. Approximately how much time per week were you
7 devoting to that venture?

8 A. I don't really know. I was going to night
9 classes and some day things with small business
10 development. Whenever they had them available, I was
11 scheduling to go. I believe I have a log of that, if
12 you're interested. I could possibly provide that. But
13 I might have been twenty at the low side to maybe forty
14 or more, I don't remember, but I was going to classes
15 at Niagara Community College. I was going to classes.
16 It was the small business, SBA, Small Business
17 Administration of the US government and the SCORE
18 organization for free classes, they had it, was it -- I
19 think it's Medaille College that they have stuff. So I
20 was kind of going all over to these different classes
21 because there was requirements that you had to meet
22 with the program to get all the stuff in and you had to
23 log all the stuff with the state so I was doing that,
24 and I think more than all that stuff, so...

25 Q. And you think you may have a log of the

1 different activities that you undertook?

2 A. I may have. Is that something you would
3 really want or is it --

4 Q. Yeah. So we will probably start some
5 documents requests.

6 MR. MILLER: There's been a couple of
7 documents mentioned. If you would just go through
8 the transcript and see what you think and send us
9 that, we'll work on it.

10 BY MS. HEMENWAY:

11 Q. Aside from the work with the defense
12 contractor -- and you said that was through Tech System
13 -- did the Tech Systems pay you or does the contractor
14 pay you?

15 A. Well, the contractor pays Tech Systems.

16 Q. But your pay comes from Tech Systems?

17 A. Yes, but I guess I still consider myself a de
18 facto employee of the defense contractor that I'm not
19 really supposed to mention.

20 Q. Aside from that employment, have you received
21 any other income from employment since your contract
22 position at Sumitomo ended?

23 A. No. The only thing I received was
24 unemployment benefits.

25 Q. And how long did you receive unemployment?

1 A. I think it was six months; whatever the
2 regulatory time period was. I think it was six months.

3 Q. I know it's varied over time depending on
4 what's going on, so...

5 A. I think it ended in July.

6 Q. Okay. So January through July timeframe we
7 think?

8 A. Yeah, but it was probably like mid-January to
9 something. I think it was just -- whatever the amount,
10 I think it was just six months when I was...

11 Q. Do you recall the amount of your benefit?

12 A. It might have been something around four
13 hundred a month, but that I could also provide the
14 exact number if you want it. I would just have to log
15 it in.

16 Q. Would it maybe --

17 A. What?

18 Q. Would it maybe have been four hundred a week?
19 If you don't remember, that's fine.

20 A. Yeah. I don't remember. That's why I'm
21 saying I could get more information for you because --
22 I'm sorry.

23 Q. No, that's okay. I don't want you to guess.

24 MS. HEMENWAY: Why don't we take a quick
25 break just to stretch our legs, grab a drink?

1 (A recess was taken.)

2 BY MS. HEMENWAY:

3 Q. Mr. Borders, I want to circle back to a couple
4 of things that you mentioned earlier, one of which was
5 that you had some review meetings during the time you
6 were placed at Goodyear and Sumitomo, and I'm just
7 wondering if you could give me some more details about
8 those meetings, starting with who would be present when
9 you have those?

10 A. Do you want the meetings that were with Mr.
11 Rawls or all meetings prior to and the ones with Mr.
12 Rawls?

13 Q. Well, let's start with the meetings with Mr.
14 Rawls, when you had review meetings with Mr. Rawls.
15 Who was present at those meetings?

16 A. Most of the time Mr. Jeff Jensen was there.
17 There were a couple of times when I believe I was
18 called in and just talked to by Mr. Rawls individually.

19 Q. Who, if anyone, from Systems Personnel would
20 be present?

21 A. Generally, for the official annual review
22 meetings there was a representative from Systems
23 Personnel and it could have been either the owner --
24 Jim Cipriani might have been there for one or two
25 meetings, but I can't remember if it was prior to Mr.

1 Rawls or after. I know Jack Hayes was at some of the
2 meetings. I believe Jeff Jensen was pretty much at all
3 the meetings because for some reason -- I'm not sure
4 why -- I was system administrator like John Cook, and
5 John Cook was directly under Mr. Rawls, but for some
6 reason I was under the development team because, for
7 some reason, I think Mr. Kirk thought that I was a
8 developer and not a system administrator working on,
9 you know, the hardware operating systems and patching
10 and software installs.

11 Q. So at these meetings for -- the meetings where
12 Mr. Hayes was present, what role would he take in the
13 meeting?

14 A. He was just sitting there listening to what
15 Mr. Rawls and I were discussing about the year in
16 review.

17 Q. Would he offer any comments of his own?

18 A. I can't recall.

19 Q. Would you have any separate meetings where you
20 met with just Mr. Hayes about your performance?

21 A. No.

22 Q. Were there any occasions when you met only
23 with individuals from Systems Personnel without anyone
24 from Sumitomo present?

25 A. They would occasionally. Basically, Lynn B --

1 we'll just refer to her as Lynn B because I can't spell
2 her name or really say it -- would take me out to lunch
3 and have a little lunch meeting.

4 Q. What types of things would you discuss during
5 those lunch meetings?

6 A. We would talk about how the job was going,
7 that kind of stuff, you know. I may have mentioned
8 things about Mr. Rawls to her or not, you know, general
9 chitchat I don't tend to remember. I would say if you
10 probably call me back in a month to ask me what I
11 talked about here, I probably wouldn't really know.

12 Q. Okay. Is there a particular reason that you
13 -- do you have any issues with your memory?

14 A. No. I just don't really commit things that I
15 guess I would say aren't really overly important to
16 storage and trying to -- I'm very horrible with names
17 and I didn't have that problem when I was in the army
18 because everybody has their name on their shirts, so...

19 Q. So occasionally you would meet with Lynn B.
20 We talked about Mr. Hayes' role at the review meetings.
21 What role would Mr. Jensen play at the meetings?

22 A. He would be there last -- like I said, he was
23 -- I was assigned to him as he was the supervisor, so
24 he was there as the supervisor role in the meeting with
25 Mr. Rawls, and I don't know if it came up with Jeff or

1 not in a discussion at one point as to why Jeff wasn't
2 counseling me as opposed to Mr. Rawls, because it was
3 almost kind of like why was Jeff Jensen even there,
4 because it was really me and Rawls' situation is going
5 on, and he was just there as a third person it seemed
6 like. He would put down some comments, I think, on the
7 review and maybe provide a little input, but I wouldn't
8 be able to tell you what it was. I would say ask Jeff
9 Jensen, ask Mr. Hayes.

10 Q. What role would Mr. Rawls take at the
11 meetings?

12 A. He was the meeting leader.

13 Q. And then what role did you take?

14 A. I was just there asking -- answering any
15 questions that he had. If he asked me a question, I
16 would try to provide some input. We would go over the
17 thing and then it was like he would say, is there
18 anything I wanted to do or did I agree with everything
19 he said, and, trying to avoid confrontation with him at
20 all costs I would, for the most part, either if it was
21 something really blatant, I would maybe try to make a
22 correction, or I would just let it all go to avoid the
23 confrontation.

24 Q. How frequently did you have these review
25 meetings?

1 A. I think there was generally two a year and
2 then sometimes those would be like the official
3 meetings and then maybe a couple, you know, chance for
4 to come by and say, you know, why isn't this done and
5 then threaten to fire you and move on, and then other
6 things where he would call you in the office and say
7 and question about time that I was submitting, question
8 why I'm working a certain set of hours, why is my start
9 time at this time and not why am I not coming in like
10 everybody else, and he would ask me what time I would
11 want to come in and then I would say that and he would
12 say okay, and then later he may question it again and
13 then change my start hours to something else.

14 Q. Do you know if that was occurring with any of
15 the regular employees of Sumitomo or Goodyear, similar
16 conversations?

17 A. I'm not really sure because I didn't really
18 try to go and query a lot of people. If something came
19 up, all I know is the one developer there, Renee
20 Rapholt, she worked early. Jeff Jensen came in a
21 little later. Other people came in early, you know.
22 It was kind of, seemed like a mixed bag as to -- but I
23 wasn't there to see or really observe or really that I
24 thought it was my place to take notes as to when people
25 arrived and left. It's really none of my business what

1 other people do. I'm accountable to myself and to
2 whoever the manager would be to try and keep him happy
3 with job performance.

4 Q. Thinking about the time when you were having
5 theater meetings with Mr. Rawls, were there any issues
6 relative to your performance under the contract that
7 were brought up -- brought to your attention?

8 A. Not really. It was -- seemed like a lot of
9 things where he would say I wouldn't communicate enough
10 information to him, but sometimes I feel that when I
11 write E-mails apparently I must be writing in gibberish
12 because it seems clear to me what I'm writing, but
13 other people seem to say they don't understand certain
14 things, but it looks perfectly clear to me as a
15 technical thing that I'm putting out, and some other
16 things he would call you in and discuss. One of the
17 other things was, I got called in about, that I wasn't
18 basically at work for nine hours a day when I was there
19 because I was -- originally it was an eight and a half
20 hour day. It was eight hours with a half hour lunch.
21 And then Mr. Rawls stipulated that I had to take an
22 hour for lunch. So that extended the day to a nine
23 hour day with an hour mandated for lunch. So I pretty
24 much, for the most part, left the plant for an hour and
25 then came back.

1 Q. Do you know if the regular employees had a
2 similar work schedule of nine hours with a one hour
3 lunch?

4 A. Yeah. I think that's pretty much what he
5 ended up setting, was a schedule like that for
6 everybody, because I think he really seemed to really
7 scrutinize the hours that I was putting in and saying,
8 you know, why was I recording -- he thought I was
9 recording on the tenth and he got a little pissed that
10 I was recording hours on the tenth and he said, report
11 them fifteen minutes because I guess he didn't want to
12 have to calculate the tenths of an hour, I guess, so he
13 made a comment about that, and then the comment about
14 the one hour lunch came up at some point.

15 Q. So when you say you were recording on the
16 tenth, do you mean in six minute increments?

17 A. Yeah.

18 Q. And he wanted you to do it in fifteen minute
19 increments?

20 A. Yes.

21 Q. Did you have the opportunity to provide any
22 feedback or comments on your own performance before the
23 meetings occurred? I'm thinking something akin to a
24 self evaluation or --

25 A. I don't think so because it wasn't -- I don't

1 think it was or I can't remember because it wasn't a
2 requirement for people as contract employees to fill
3 out all the Goodyear review forms and all that stuff.
4 That was really geared towards -- physical employees
5 had to fill out all of that paperwork. I do know what
6 you're referencing because everybody always moaned and
7 groaned about it --

8 Q. Okay.

9 A. -- as probably everybody does.

10 Q. So, in that regard, your experience at
11 Goodyear Sumitomo was a little bit different than the
12 regular employees --

13 A. Yes.

14 Q. -- when it came to reviews? Okay. At any
15 point in time, while you were placed through Systems
16 Personnel, did your pay rate increase?

17 A. Yes.

18 Q. Do you know who increased that rate?

19 A. I believe I went in and asked Mr. Papelow for
20 an increase. I believe that -- I don't know what the
21 change was, but it went up.

22 Q. Do you know if he had to talk with someone
23 from Systems Personnel to get approval for that?

24 A. I don't know. I would expect he did because
25 it would -- they would want to increase their side on

1 the contract, but I don't know. I think it might have
2 been around the six month timeframe, six months to a
3 year or something that I went and talked to Mr.
4 Papelow, but I don't know exactly.

5 Q. So pretty early on during your placement?

6 A. Yeah, because it was, from my previous
7 position to there it was a substantial cut.

8 Q. You mentioned or you talked earlier about a
9 period of time when you went down to thirty hours per
10 week or about thirty-two hours per week. Can you do
11 you recall the time when that happened?

12 A. It happened right after that that I talked to
13 Ms. Walleshauser and then I had the meeting with Kirk
14 Rawls and in that review meeting he cut my hours to
15 thirty in that meeting and that's when it started.

16 Q. And so do you remember what year that was or
17 what --

18 A. It was 2014.

19 Q. Would that have been around August of 2014?

20 A. I believe that was possibly right. I think it
21 was August and...

22 Q. And then how long did that continue? How long
23 did you continue to work about thirty hours?

24 A. It seemed until I was assigned the AS/400
25 project and I think that was in the fall of 2015

1 because nobody else wanted to take it on and I agreed
2 kind of reluctantly because I knew the IBM hardware and
3 the -- basically the virtualization kind of stuff that
4 was going to go on that, so I was familiar with that
5 part of it, but I knew nothing about how the AS/400
6 worked, other than it was on the IBM power system as a
7 virtual machine.

8 Q. So when you were restored back to the -- you
9 were restored back to forty hours per week?

10 A. Yes.

11 Q. Was that something that you asked for? Was
12 that something the company proposed?

13 A. That was -- Mr. Rawls asked if I would go back
14 to forty too for the AS/400 project.

15 Q. And you agreed to that?

16 A. Why wouldn't I? I was there for the company,
17 for their needs and whatever they wanted.

18 Q. And after you returned to that full-time or
19 forty hour commitment, did you continue to have
20 absences related to your migraines?

21 A. Occasionally, yes.

22 Q. When you say occasionally, did you have a
23 recollection of the frequency with which that occurred?

24 A. That would be in that stuff I kind of -- it
25 would show when I was not at work, but the migraines

1 still continued. It's not like they went away.

2 Q. Do you know in your log if the reason for
3 absences distinguished if it was something for other
4 than a medical reason?

5 A. Yes.

6 Q. So if you were absent for personal reasons,
7 that it would be --

8 A. I believe that would be listed in there also
9 because I kind of was keeping track of my sick time
10 kind of as a general reference just to kind of know how
11 much I was out so I could kind of gauge that.

12 MS. HEMENWAY: So I'd like to have this
13 marked as Exhibit 1, please.

14 (Whereupon, Exhibit 1, questionnaire, was
15 marked for identification.)

16 BY MS. HEMENWAY:

17 Q. Mr. Borders, I'm going to hand you what's been
18 marked as Deposition Exhibit 1. I'll ask you to take a
19 minute to review it and then, once you've had a chance
20 to do so, I will ask you some questions about it.

21 A. Okay.

22 Q. Do you recognize Deposition Exhibit 1?

23 A. No, I don't, because that's not my writing.

24 Q. Okay. So that was my next question. Do you
25 know whose handwriting this is? If you don't recognize

1 it.

2 A. I can't remember, but I do know that's not my
3 writing.

4 Q. Do you remember or recall anytime having a
5 meeting where you were asked the questions that appear
6 on Deposition Exhibit 1?

7 A. I can't at this time.

8 Q. Okay. I'll take that back then. Thank you.

9 MS. HEMENWAY: I will give you this to be
10 marked as Deposition Exhibit 2, please.

11 (Whereupon, Exhibit 2, performance
12 evaluation, was marked for identification.)

13 BY MS. HEMENWAY:

14 Q. Before I give you Deposition Exhibit 2, I just
15 wanted to circle back. Earlier we talked about a
16 meeting that you had with Ms. Walleshauser about where
17 you say you requested FMLA leave. And do you recall
18 when that meeting occurred?

19 A. It was roughly, I believe, a week before my
20 hours were cut to thirty.

21 Q. Okay. I'll show you Exhibit 2. Take a minute
22 to review it and then, once you've had a chance to do
23 so, I'll ask you some questions about it.

24 A. Okay.

25 Q. So, taking a look at Deposition Exhibit 2, it

1 appears to be a performance evaluation; right?

2 A. Yes.

3 Q. And that's for you, and it looks like it's
4 dated February 25th of 2014; correct?

5 A. Yes.

6 Q. And in here, if we look under attendance
7 punctuality, it mentions that you're late or not
8 available to work frequently; right?

9 A. Yes.

10 Q. And then down under dependability it indicates
11 because of tardiness you've not been available for a
12 forty hour work week; right?

13 A. Correct.

14 Q. And then, if we look at the comments under the
15 evaluation heading, about two-thirds of the way down
16 the page, at the end of that paragraph it says,
17 attendance has been lacking due to illness but is
18 expected to improve. Do you see that?

19 A. Yes.

20 Q. And I believe earlier you mentioned that
21 towards the end of 2013 you suffered an illness and
22 you weren't working for a period of time; is that
23 correct?

24 A. Yeah. I was out for about, I believe, the
25 whole month of October. There was some work performed

1 using VPN access --

2 Q. Okay.

3 A. -- but not a lot because I was heavily
4 medicated, in a lot of pain.

5 Q. Was that related to your migraines or was that
6 a different condition?

7 A. That was a kidney stone.

8 Q. Okay.

9 A. They had to put in a stent for a couple weeks.

10 Q. And you think that was the October 2013
11 timeframe?

12 A. Yeah, it was.

13 Q. And, after you returned or started working
14 again, after that -- well, scrap that. So when you see
15 that comment in here under additional comments, and
16 it's referencing that your attendance was due to
17 illness, is it your understanding that it was referring
18 to that period of time when you were out for the kidney
19 stone?

20 A. No. It was referring to my migraines and
21 possibly that he didn't -- he mentioned -- I don't know
22 when he mentioned it, but there was something about
23 that I'm sick a lot, I'm not a healthy person because
24 of that, and the main focus, I think a lot of it was
25 around the migraines, and this review is what led to

1 that me working trying to work through everything and
2 then what prompted me to seek relief under the Family
3 Medical Leave Act, and then after that, at the end of
4 the year, I ended up doing something kind of unrelated
5 and for my health and well-being that actually saved my
6 life. I got two cats at the end of December of 2014
7 and a third cat in 2015 and those cats gave me better
8 mental stability and I believe they saved my life in
9 helping to overcome some of the issues with my
10 migraines. So call it whatever you want, animal
11 therapy, pet therapy, whatever.

12 Q. So that was, you said, end of 2013, early
13 2014?

14 A. End of 2014.

15 Q. Okay. So end of 2014, early 2015?

16 A. Yeah, is when I got the pets, and they turned
17 out to be pet therapy for me.

18 Q. So during 2014 were you absent from work for
19 any reasons other than migraines that you recall, other
20 illnesses or medical reasons?

21 A. I can't think of any, but if there were it
22 would be listed in my thing as to if I was out sick for
23 an illness as opposed to not just the migraines. I was
24 pretty -- documenting pretty much everything that
25 related to being away from work because I tried --

1 anybody who's sick, I tried to avoid them, because when
2 I get sick it usually gets chest, sinuses, ears, the
3 whole gambit, and then I have coughing fits, and I
4 coughed myself unconscious once.

5 Q. I don't go that far, but I can understand the
6 coughing situation.

7 A. Yeah, because I still have a -- from 2012, I
8 still have an issue with coughing that I'll lay down,
9 I'll start coughing, and then from that initial bout in
10 2014 -- 2012, that I did pass out from that and had to
11 go to the emergency.

12 Q. Okay. So it looks like here in February of
13 2014 under additional comments it says that
14 reevaluation would occur in ninety days, and, to your
15 knowledge, did that happen? Was there a follow-up
16 discussion to this performance evaluation?

17 A. I would -- that would have been the evaluation
18 in August.

19 Q. During this meeting in February of 2014 did
20 you and Mr. Rawls discuss specific goals that you could
21 achieve during the interim before that reevaluation was
22 to occur?

23 A. I think it was just really trying to address
24 -- my thing out of that was addressing the attendance,
25 that seemed to be his big emphasis, was that I was out,

1 I was sick a lot. He always stressed that he wanted
2 somebody for forty hours and it turned out to be his
3 idea of forty hours between the hours of like eight and
4 five.

5 Q. And were those the standard working hours for
6 the plant?

7 A. No. It turned out that I guess he kind of
8 wanted everybody there from, I think his idea was
9 everybody there at 7:30 or earlier, and then he wanted
10 -- although with the way it was initially, people were
11 doing -- we had people in early and we had people
12 coming in later so you had longer kind of coverage time
13 of personnel in the IT office. So we generally had
14 people there, I would say, from probably from maybe
15 like 6:30 to 6:00, kind of like, almost like it seemed
16 like a twelve-hour coverage period because the plant
17 did run 24/7, and when people weren't there, then it
18 would be off-hours pager calls.

19 Q. So you said at some point there was about a
20 twelve-hour coverage period. Did that change under Mr.
21 Rawls?

22 A. It seemed to be where he wanted everybody
23 there between, I think probably from seven to five.
24 That's the best estimate I can probably give you.

25 Q. So to your -- as it relates to you, he was

1 looking for you to work within a more specific --

2 A. Yeah.

3 Q. -- window of time?

4 A. I was coming in -- generally I would be there
5 8:30 to 9:00 and then he moved it to 8:00 and then he
6 did it -- from then he added that hour for lunch so
7 however that works out, from 8:00 to 5:00 or whatever
8 is probably nine hours, I think.

9 Q. And this impacted not just you -- or this
10 change and this movement towards a shortened coverage
11 period didn't just impact you, it impacted others as
12 well?

13 A. I'm not really sure on how it impacted the
14 shift, but his main thing -- one of the things that he
15 said to me -- one time he goes, why are you coming in
16 at this time, everybody else is coming in at this time.
17 He goes, I want you here at this time. So that was, I
18 think, the eight o'clock shift change, and then I think
19 he made another comment that if I didn't like it he
20 would have me come in at 7:30. It almost felt like he
21 was trying to antagonize me enough to say that I would
22 just quit, with all the things that were transpiring
23 with him.

24 Q. So you mentioned that it felt to you like he
25 was trying to antagonize you, but he also, at the same

1 time, encouraged you to apply for the desktop support
2 position; right?

3 A. Right, but that was at the very end. That was
4 in December after he had already canceled the contract,
5 and when he canceled the contract I had asked him about
6 a full-time position that he had said that he was going
7 to offer to people, and then his comment was, I told
8 you to apply for that position that he posted in June
9 that was supposed to be an AS/400 position, and I
10 questioned him on that and he said, I never said that.
11 So that's all those kind of mixed things that I get
12 from him where he'll say, I never said that or I said
13 this, and then, the thing that cemented it in my mind
14 that he knows everything maybe when he had basically
15 total recall with Robert Dege about the interview in
16 June, I told you this, don't you remember that, and
17 went down all this stuff about how the position was
18 supposed to be taken care of.

19 Q. I just want to clarify a couple of things.
20 You just mentioned that, when you were informed that
21 your contract was being canceled, you had asked about a
22 full-time position?

23 A. Yes.

24 Q. So what was the response at that time?

25 A. He said that -- he had said he told me to

1 apply for that other position, which he never did, and
2 that's when I said that, you had said you were creating
3 a position for an AS/400, and then he said, I never
4 said that. So when you get those kind of two
5 responses, you kind of shut down and don't really kind
6 of press the issue anymore.

7 Q. Do you have any -- I guess, why do you think
8 he was antagonizing or berating, to use some of the
9 terms you had used earlier?

10 A. I think.

11 MR. MILLER: I'm going to raise only one
12 objection, that this is sheer speculation on his
13 part.

14 MS. HEMENWAY: Sure.

15 MR. MILLER: You may answer if you
16 understand the question.

17 THE WITNESS: Okay. I think it's because
18 he came up in the Goodyear facility in Lawton and
19 everything was very strict hours. He was --
20 initially told us some of his background, that he
21 used to make tires for Goodyear and then he moved
22 into the IT department, and I think his envision of
23 everything was, you know, you're here for eight
24 hours a day, forty hours a week, and whenever we
25 want you on the weekends to perform upgrades as

1 overtime or whatever. So I think that was just his
2 thinking, and he couldn't get past the idea that
3 people have medical issues and that in the IT they
4 always tell us that we're 7/24/365, so there's
5 always been flexibility in the IT environment of
6 working extra, taking some comp time and other
7 things. It's -- at my previous jobs it's never been
8 a problem with accommodations for being able to work
9 around my medical issue with the migraines. Even at
10 the current job, they're very accommodating. If I
11 say I'm not feeling well, they go, okay, go ahead,
12 go home, get yourself better, and we'll see you in
13 the morning.

14 BY MS. HEMENWAY:

15 Q. Were there ever occasions when you wanted to
16 take off or not report to work when you were placed at
17 Goodyear or Sumitomo and you were denied the
18 opportunity to do that?

19 A. I can't think of anything where I would have
20 asked for prior time off and not been given the time
21 off. It was really, if you need time off tell them
22 when you're not going to be there in advance. The only
23 kind of bad conversation I had with Kirk, when I was
24 out on a migraine they had an AS/400 problem with a
25 failed disc drive and I was out with a severe migraine

1 and they called and I said, I'm not available, I can't
2 drive. I had a really bad headache over the period of
3 a couple calls, and I was also talking with Carey Dewer
4 about this incident, because this piece of equipment
5 was under contract with IBM. The thing was, you call
6 IBM, they send the service tech out and he fixes the
7 problem. There's really nothing that I needed to do
8 other than be the -- I guess you would say the go
9 between. So Carey Dewer was handling that and they
10 actually, as they usually did, they sent out the wrong
11 service tech so he didn't know how to fix it, and I
12 heard him talking and I told Carey, don't let him do
13 what he's going to do, and Carey was going to stop him
14 anyway, because I go, you need to get the right person
15 on the site to fix this, and Kirk had called back and
16 made a comment of when we're discussing and I said, I'm
17 not feeling well, I can't drive, and he said something
18 to the effect with an expletive -- I can't believe I
19 can't get expletive support and hung up. When I was
20 talking with Carey and I realized that the guy was
21 going to screw up the system, I told Carey, don't let
22 him touch it, we've got to get the right guy in there,
23 and then I drove to Dunlop to be on-site for that
24 problem, to make sure that they didn't screw up the
25 system.

1 Q. Did anyone specifically ask you to report at
2 that time?

3 A. No. I came in on my own to say I will be
4 there, and the last thing, when Kirk said what he said,
5 I said, I really shouldn't be driving, but I ended up
6 going anyway at a relative risk because when you're not
7 -- I guess you could compare it to driving under the
8 influence of whatever you want to call it, because
9 you're not really able to focus well and concentrate,
10 which you need to do when you're driving, so there was
11 a risk involved, but I did get there and I was on-site
12 for that final support of that system.

13 Q. When Mr. Rawls said that he couldn't believe
14 he couldn't get support, what support did you
15 understand him to be referring to?

16 A. Me being on-site to work on the system because
17 I told him we have an IBM contract that takes care of
18 everything. There's nothing more that I would do
19 because they bring the part. They put the part in and
20 they do whatever they need to do on the system to fix
21 it because they're being paid for that. They're the
22 absolute experts on that system. We may touch that
23 system once or twice a year, but it's a 24/7 system.
24 It runs the factory, the AS/400, and it's the only
25 reason I was involved because underneath it was Unix

1 that operated the system that they then put the AS/400
2 machine on. Had they lost the AS/400, they lose the
3 whole factory. They have to do everything on paper
4 until it's recovered, so it was very important, and I'm
5 -- I'll bet they're off it by now because they were
6 supposed to be moving to -- what's the other SAP
7 transfer with Sumitomo they wanted -- I think it was
8 SAP, to do everything on.

9 Q. So then, looking again at Deposition Exhibit
10 2, there are some goals that are stated in that
11 evaluation section. One of those is to establish a set
12 work schedule. Did you and Mr. Rawls discuss what that
13 schedule might look like?

14 A. That's what he wanted. He wanted me there
15 from, I believe it was 8:30 to 5:00 or whatever, and
16 that's where I just -- I said, okay, fine, you want me
17 here every day, I'll be here every day, no matter how I
18 feel, and that's where it just kept building and
19 building and building to the point where I -- it was
20 getting to the point where I couldn't continue because
21 I wasn't really doing a competent job for the company.
22 I would say I was wasting some of their money, and
23 that's when I went to talk to Linda Walleshauser about
24 being able to get, I guess you would say protection
25 under FMLA, because if I filled out that paperwork he

1 couldn't then, in my mind, hold against me that I was
2 out sick for the migraines.

3 Q. Thank you. When your contract -- or when you
4 were informed your contract was ending, were you given
5 any reason? Was any reason given to you?

6 A. Yeah. He had just said that they weren't
7 doing any contracts past 2017.

8 Q. Past 2016?

9 A. Yeah, into 2017.

10 Q. To your knowledge, at the time were there any
11 other contract employees or contract workers in the IT
12 area?

13 A. I think I was the last one.

14 Q. And, during the time you were placed, there
15 had been a number of other individuals that had been in
16 a contract position; right?

17 A. Yes.

18 Q. And they had -- either their contracts had
19 either ended or they had been moved into a permanent
20 position?

21 A. The ones under Kirk Rawls were John Cook, he
22 was hired full-time, and then Brian Keogh was brought
23 over to desktop full-time, and that just left me to see
24 what was going to do with me.

25 Q. Okay.

1 A. I had fully expected, from the thing in
2 September, that he was going to continue it on through
3 September, but a month later he informed me that it was
4 ending and he asked me if I wanted to stay on to train,
5 make sure the other guy got fully trained up and I said
6 sure. I don't harbor any ill will against anybody.

7 Q. When did you first start developing the
8 product that eventually you filed a patent for?

9 A. It came to me in August of 2016. I was
10 actually -- I guess the end of 2015 it was kind of -- I
11 was trying to come up with something to, I don't really
12 want to say circumvent the Safe Act, but to work within
13 the Safe Act terms to where I wouldn't have to worry
14 about anything that I owned being illegal or wanted to
15 buy being illegal, because it was all based around the
16 semiautomatic action of the rifle with a detachable
17 magazine, and I go, there's got to be a way to fix
18 this. I was working with a gun shop that I found over
19 around the area, throwing some ideas at them, and then
20 this one came to me in August and I made sure that I
21 wasn't doing anything with that on company time or
22 anything with them. I was pretty adamant to make sure
23 that nothing that I did could ever be basically claimed
24 by the Sumitomo or Goodyear Dunlop.

25 Q. When did you make the decision to pursue that

1 or that you would pursue that -- pursue that as a
2 business as opposed to a personal venture?

3 A. I was looking at doing that right from the
4 beginning, to try and sell it, but because I was going
5 to open up an LLC in December or November, it was
6 fortunate in my case that Mr. Rawls informed me that
7 the job was canceled in October before I opened the
8 LLC, because, had I opened the LLC, I would have been
9 no longer eligible for unemployment. So there was a
10 lucky break there for me.

11 Q. Once you had opened the LLC, if you had been
12 able to pursue that, your initial plan of opening the
13 LLC in November of 2016, how long did you anticipate
14 continuing to work on a full-time basis?

15 A. I guess I would say once the company was
16 making at least one to two million dollars a year, but
17 then it would become a full-time job, but it was all
18 considered side work until, I guess you would say, the
19 patent was official, until the patent is official.
20 It's really nothing. You have the right to pursue
21 selling it under patent pending, but if somebody else
22 beats you, then you just did all this work for nothing.

23 Q. You mentioned that you were taking classes at
24 NCCC and through some other state organized program.
25 When did you start taking those classes?

1 A. I think it might have been -- again, I would
2 be able to, probably more detailed information, but I
3 think I applied in February for the program.

4 Q. Of?

5 A. Of 2017.

6 Q. So after your contract ended?

7 A. Yeah, because you had to have so much time
8 left to get accepted into the SEAP program and then you
9 had to apply and, until you applied and got accepted,
10 you really didn't have to do it, but I may have taken
11 some earlier because I was doing nothing, so it was
12 like I had all this time on my hands. I can only --
13 you can look for all the Unix and Linux jobs in the
14 world, but there's maybe a handful here in Western New
15 York. I was tied -- I couldn't leave the state at the
16 time because I was tied in with my patent thing with
17 the lawyers here so it wouldn't have been a good time
18 to leave the state.

19 Q. You mentioned that there's a handful of jobs
20 in Western New York in the Unix/Linux area. Do you
21 know why that is? Do you have an understanding of that
22 as working in that area?

23 A. Well, Windows is dominant on most of the
24 stuff. There's, you know, there's companies that have
25 it but there's not that many positions open. UB has

1 stuff. Buff State, M&T has some stuff. I think
2 because there was another position that opened up with
3 Tech Systems possibly with -- I can't even think of the
4 company, but there was a company over by the airport
5 there that they were looking at getting me in, but I
6 didn't make the cut on that one, and it's just -- it's
7 a little -- it's a niche kind of thing. There's -- who
8 else is it? Big company, big company up in Niagara
9 County. They put an epic data center.

10 Q. Yahoo?

11 A. Yeah, that's it, Yahoo. That's another one
12 there, so there's not -- you'll see probably ten other
13 things to one Unix. Unix is really small. Linux is a
14 little bigger in this area and then Windows is
15 dominant.

16 MS. HEMENWAY: Okay. So if I could have
17 this marked, please, as Exhibit 3.

18 (Whereupon, Exhibit 3, 2014 objective
19 plan, was marked for the identification.)

20 THE WITNESS: On the job front, there was
21 a possible prospect with Tech Systems out of
22 Virginia at the Radford arsenal that looked like it
23 was promising, but then it just seemed to die. So I
24 don't know if it was Tech Systems. Tech Systems
25 kind of putting a squash on it from here down to

1 there, but they were interested in what I had,
2 possibly, for their position down the Radford
3 arsenal down in Virginia.

4 BY MS. HEMENWAY:

5 Q. Mr. Borders, I'm showing you what's been
6 marked as Deposition Exhibit 3. If you would take a
7 couple minutes to look at that and then I'll ask you
8 some questions about it.

9 A. Okay.

10 Q. So do you recognize Exhibit 3?

11 A. Yeah. I do.

12 Q. Okay. This looks to be an objective plan that
13 is dated August 22 of 2014?

14 A. Yes.

15 Q. So if we take a look at the second page of
16 Deposition Exhibit 3, did you sign this document?

17 A. Yes.

18 Q. And where on this page does your signature
19 appear?

20 A. It's the last one.

21 Q. So it's the one sort of next to manager's
22 signature?

23 A. Yes, it is.

24 Q. So it just looks maybe the individual's signed
25 out of order; right?

1 A. Yeah.

2 Q. And then it looks like Mr. Rawls and Mr.
3 Jensen also signed this document?

4 A. Yes.

5 Q. So, taking a look at the first page of the
6 document, do you know who the matrix manager would have
7 been?

8 A. In which part of the --

9 Q. So, it looks like there are comments by matrix
10 manager, comments by manager, and I'm wondering if you,
11 at the time, knew who wrote which comments?

12 A. I don't know.

13 Q. If we take a look at the bottom of the first
14 page of Deposition Exhibit 3, in that paragraph that's
15 under mid-year opportunities by manager, and looking
16 sort of at the second half of that paragraph it talks
17 about your hours will be reduced to thirty per week
18 Monday through Friday, 8:00 to 5:00 p.m. Do you see
19 that?

20 A. Yes.

21 Q. So is this -- does this language memorialize
22 the discussion that you had with Mr. Rawls and Mr.
23 Jensen about what your hours would look like going
24 forward?

25 A. Yes, and, looking at this now, the manager

1 item is Kirk Rawls.

2 Q. Okay.

3 A. And then the matrix manager would be Jeff
4 Jensen then.

5 Q. Okay.

6 A. Just because Jeff Jensen would have no --
7 didn't do the thirty hours.

8 Q. Okay. So after your hours were reduced to
9 thirty per week and the expectation was that you would
10 be there thirty hours per week, did you -- were you
11 able to work those thirty hours on a consistent basis
12 or did you have occasions when you weren't able to work
13 thirty hours per week?

14 A. I believe I was -- I believe I did, for the
15 most part, the thirty. Once again, I would have to
16 refer to that, my hours log, to confirm.

17 Q. So when was the next time that you recall
18 talking with Mr. Rawls and Mr. Jensen about your
19 performance?

20 A. I can't recall anything at this time. I'm
21 sorry.

22 Q. That's okay.

23 MS. HEMENWAY: So if I can have this
24 marked, please, as Exhibit 4?

25 (Whereupon, Exhibit 4, 2014 objective

1 plan, was marked for identification.)

2 BY MS. HEMENWAY:

3 Q. Mr. Borders, I'm showing you what's been
4 marked as Deposition Exhibit 4. I'll ask you to take a
5 minute to review that and then I'll ask you some
6 questions about it.

7 A. Okay.

8 Q. Do you recognize Deposition Exhibit 4?

9 A. Yeah, I do.

10 Q. And this appears to be a review, or an
11 objective plan regarding your performance, that is
12 dated May 4th of 2015; right?

13 A. Yes.

14 Q. It looks like you Mr. Jensen and Mr. Rawls all
15 signed off on this; correct?

16 A. Yes.

17 Q. And so I'm -- for my reading, it looks like
18 the first page of Exhibit 4 is very similar to what was
19 on Exhibit 3; right?

20 A. It's the same.

21 Q. And then the second page of Exhibit 4 includes
22 some new comments and new material that we didn't see
23 in Exhibit 3; right?

24 A. Yes.

25 Q. And this would reflect comments about your

1 performance from August of 2014 up through May of 2015?

2 A. Yes.

3 Q. Your progress. Okay. So here, when we'll --
4 let's talk about the purpose of your assignment at
5 Sumitomo. As you understood it, what was your role to
6 be in your contract place patent?

7 A. Unix and Linux support.

8 Q. And who else at either Goodyear or Sumitomo
9 provided that Unix/Linux support?

10 A. Nobody.

11 Q. And so, if you were not there for any reason,
12 who would have provided the backup or been able to
13 perform the tasks that you would have performed had you
14 been available?

15 A. We had some people who knew some Unix and
16 Linux and could do back stuff. Carey Dewer could do
17 some stuff. Jeff Jensen could do some stuff. If need
18 be they could also have reached out to the support,
19 some Linux and Unix support people in Akron.

20 Q. Okay. Aside from the basic support that you
21 would provide, were you also tasked with working on
22 projects that related to the Unix/Linux systems?

23 A. Yes.

24 Q. And, if you were not present or available at
25 work, who would have provided the support on those

1 projects, or who would have performed those projects in
2 your absence?

3 A. For the support that was needed for what I was
4 doing there probably would have been nobody, but most
5 of the support I provided was mainly front end support
6 for the projects of creating new systems for the
7 application upgrades, so, once those were complete, my
8 role would have been very limited.

9 Q. So, in performing those or creating the
10 systems for the application upgrades, were there time
11 constraints on how long you would have to complete
12 those projects?

13 A. I would say yes.

14 Q. And if for some reason you got delayed in
15 creating the new system, then the project was really
16 delayed from the outset, right; it wouldn't be able to
17 move forward?

18 A. I don't know if that ever happened, but I
19 can't remember, but that would be the case if something
20 like that did happen. And you're not asking a
21 question, so...

22 Q. Thank you. Are there any other individuals
23 associated with SSBC Arms besides yourself?

24 A. Just myself.

25 Q. Okay. What does SSBC stand for?

1 A. Single shot bull catch.

2 MS. HEMENWAY: Can I have that marked as
3 Exhibit 4 -- or, sorry, Exhibit 5?

4 (Whereupon, Exhibit 5, summons, was
5 marked for identification.)

6 BY MS. HEMENWAY:

7 Q. Mr. Borders, I'm going to show you what's been
8 marked as Deposition Exhibit 5. You can take a couple
9 of minutes to review it and once you've had a chance to
10 do so I'll ask you some questions about it. All set?
11 Do you recognize Exhibit 5?

12 A. Yeah. This is the claim that they submitted.

13 Q. So this is a copy of the Complaint that was
14 filed against Goodyear Sumitomo; correct?

15 A. Yes.

16 Q. If we can take a look at paragraph eleven,
17 please?

18 A. Are these the ones that are numbered?

19 Q. Yeah. So, looking at paragraph eleven,
20 numbered paragraph eleven, it indicates that you are a
21 cancer survivor. At any point in time did the fact
22 that you were a cancer survivor impact on your ability
23 to perform your job or perform the work that you were
24 expected to perform at Goodyear or Sumitomo?

25 A. Well, that is related, as far as I can tell,

1 to the migraines. The migraines started shortly after
2 my cancer treatment. I also have some other issues
3 with the, I guess you would call it affecting the job,
4 which was what they could only classify it as irritable
5 bowel syndrome that at times I would have to run to the
6 bathroom, but it's not -- that's the only category that
7 the VA had to classify it.

8 Q. With respect to the migraines, how did they
9 impact your ability to perform your job?

10 A. I would not be able to come to work all the
11 time. I would have to possibly leave early. On one
12 occasion John McClain drove me to the VA hospital to
13 try and get some treatment and it took too long and I
14 left the emergency room because it was starting to
15 subside and he drove me home.

16 Q. If we can take a look at paragraph sixteen,
17 please, so looking at paragraph sixteen in here, you
18 mentioned that when Mr. Rawls would not allow overtime
19 that resulted in confrontations and you cite to an
20 example occurring in July of 2014 where it looks like
21 Mr. Rawls questioned the amount of time that or there
22 was a dispute between you and Mr. Rawls about how long
23 a particular project or task should take; right?

24 A. Correct.

25 Q. And, so, what was the result of that

1 discussion?

2 A. The result was, I believe it came down to that
3 he had to be asked and given permission to authorize
4 any overtime. So after that point, whenever they would
5 call me I would ask, did Mr. Rawls approve this. If
6 not, I told them they had to call him for approval, and
7 then after that happened for a while, he came back and
8 said, don't have them call me, if it's broke, fix it.
9 So that was kind of how that whole thing about overtime
10 kind of evolved, because his thing about this
11 particular paragraph was that I was installing patches
12 on the production system and they were running, so I
13 went home and was checking in periodically. I was only
14 logging the little bit of time that it was taking me to
15 check in periodically and he got upset because he goes,
16 it doesn't take that long to install patches, but they
17 wanted the system to be available first thing in the
18 morning, so I was checking it possibly every hour to
19 see when they finished so that I could bring the system
20 back up.

21 Q. Okay. And, despite the disagreement about the
22 amount of time that it would take to complete that
23 project, did you, in fact, complete it?

24 A. Yes.

25 Q. And were you paid for the time?

1 A. Yeah. I only -- I believe I only billed him
2 for the little bit of time. I didn't bill him
3 basically saying, I went home, logged on at five
4 o'clock or six or whatever until like two o'clock in
5 the morning. There's no way I know. There's no way I
6 billed him for that whole time. I would have only
7 billed him for the portion, the little slices that I
8 was actually engaged and looking at the system and
9 doing things.

10 Q. If we can take a look at paragraph eighteen,
11 please.

12 A. Okay.

13 Q. So, looking at paragraph eighteen, the second
14 -- I'm sorry, sort of the second sentence indicates the
15 meeting was arranged during the week of August 4 of
16 2017 and that's concerning a meeting you had with Ms.
17 Walleshauser, but in 2017 you were no longer placed at
18 Sumitomo?

19 A. Yeah, that would be a mistake on the date.

20 Q. And so would that have -- would that meeting
21 have occurred, actually, in August of 2014?

22 A. Yes.

23 Q. I just want to clarify that.

24 A. Had I read this after I just took some classes
25 from ECC, I would have noticed that.

1 Q. Okay.

2 A. Because they tell you to notice things more.
3 It's amazing that they tell you how your brain just
4 flows right over stuff.

5 Q. So the next sentence says, during this meeting
6 with Ms. Walleshauser, the plaintiff discussed Kirk
7 Rawls' and Mr. Rawls' persecution of the plaintiff
8 about being out sick with migraines. What specifically
9 did you discuss with Ms. Walleshauser?

10 A. I told her the whole scenario of how I was
11 working through all the migraines from that meeting
12 where he said I needed to improve my stuff in February
13 until that time point. It just got so unbearable that
14 it was just, it almost seemed like I had a headache
15 every day during that whole period because of the added
16 stress of, well, you have to be here from this time to
17 this time no matter what, and so I went and told her
18 all of that and how he was always saying that, you
19 know, you're sick, I need you here basically forty
20 hours a week, you know, maybe I should look for
21 part-time work because I'm not here all the time. All
22 those kind of things all just came to a head where it
23 was like where I just can't do this anymore and that's
24 when I went to go and get relief under the Family
25 Medical Leave Act to be able to say, okay, I can take

1 this day off under FMLA and then be back the next day
2 and, if it happened again, I could take another day.
3 You had up to, I think it was twelve weeks of total
4 days of unpaid time, and it's not like when I was out
5 sick that they remember paying me. They were only
6 paying me when I was physically at work. So anytime I
7 was out sick I wasn't getting any benefit from the
8 position, so it was like all on me anyway. So it was,
9 I guess, sort of a win-win for the company that they
10 don't have to pay for sick time.

11 Q. After August of 2014 and this conversation
12 where you say that you asked Ms. Walleshauser about
13 FMLA, did you ever go back to anyone at Sumitomo and
14 again request FMLA time?

15 A. Shortly after this I had the meeting with
16 Kirk, Mr. Rawls, and he cut my hours to thirty, so at
17 that point it's like, well, if you bring anything more
18 up he'll just fire you because it already seemed like
19 it was retaliation for going to HR and bringing up this
20 issue to Ms. Walleshauser and everything that I had
21 said to her came basically right out of Mr. Rawls'
22 mouth almost verbatim to what I had talked to her about
23 and then my hours get cut to thirty. What else am I
24 supposed to think? I didn't get any.

25 Q. I don't want to interrupt you but my question

1 was, did you go ask anyone else at other any time about
2 FMLA?

3 A. No, because of what had transpired.

4 Q. And you acknowledge that in this timeframe you
5 weren't performing to the best of your ability; right?

6 A. That is correct.

7 Q. When you talked with Ms. Walleshauser about
8 the stress that the schedule was creating for you, did
9 you ask for any accommodations in the form of a
10 shortened schedule or a variable schedule?

11 A. Well, I told her that I had accommodations
12 before to be able to work a flexible schedule with Mr.
13 Papelow and that all ended under Mr. Rawls and that I
14 wanted to apply for the FMLA program to be able to get
15 the flexibility of sick time without that sick time
16 being held against me as a bad point because that's
17 what it seemed like, everything was -- was all my
18 absences or coming in late was all related because I
19 was sick and it was all being held against me because I
20 have a disability.

21 Q. And so when you were given the thirty hour per
22 week expectation, was it your understanding that so
23 long as you were working thirty hours per week there
24 wouldn't be an issue, the difference in the ten hours
25 would not be held against you?

1 A. Yes, because he had said, well, you're not
2 here forty, let's reduce it to thirty, and then that
3 basically was a day off every week to accommodate the
4 possibility of a migraine, and it was also asked at
5 that time about the thirty, if I was available would I
6 be able to work the extra and he had said, yes, but
7 then when I continued to ask him there were some times
8 that he had me come in for the extra day and then it
9 came down to that he kept saying no for the extra time
10 if it was available, and that's at a point I just
11 stopped asking him. If my thirty to thirty-two hours
12 were up, then the next day I was off.

13 Q. So did you have an understanding of why he
14 would tell you no in those instances?

15 A. No. He just said no.

16 Q. Did you ask why he didn't want you coming in?

17 A. No, because that would create more
18 confrontation that I didn't need.

19 Q. Taking a look at paragraph twenty-five,
20 please.

21 A. Okay.

22 Q. So this talks about the Unix/Linux
23 administrator position that was posted in May of 2016.
24 Do you see that?

25 A. Yes, I do.

1 Q. You indicate that the position as posted
2 included the bachelor of science degree and that you
3 were precluded from applying for the position. Do you
4 see that?

5 A. Yes.

6 Q. No one actually told you you couldn't apply
7 for the position; right?

8 A. That is correct.

9 Q. So you just made a decision yourself not to
10 apply, based on the express requirement of a bachelor
11 or science degree; right?

12 A. No. I had looked at the whole job position
13 and that was prior to that he had said that he was
14 posting a position for AS/400. So it was my
15 understanding at the time when this came out that it
16 had -- not only did it have Unix and Linux and it was a
17 title of Unix and Linux, but it had networking,
18 Windows, VMware, AS/400, so in my mind, in addition to
19 the bachelor's degree that it said that that was a hard
20 requirement and I didn't have it, that he was looking
21 for a third person because he had said he was putting
22 out a requisition for an AS/400 administrator, so in my
23 mind he was looking for an AS/400 administrator with
24 all these other abilities to be able to work as an
25 extra person with John Cook, the Windows administrator,

1 and myself as Unix to have three people to cover the
2 positions that we had really more work than two of us
3 could do.

4 Q. I guess I'm not quite understanding. Why
5 didn't you apply for the position? What factors? In
6 your mind you obviously looked at the position?

7 A. Right.

8 Q. You looked at the posting. Why did you look
9 at the posting?

10 A. Because it said Unix/Linux administrator.

11 Q. So did you look at it to see if it was
12 something you would be interested in posting for?

13 A. Yes.

14 Q. And why did you decide not to post for it?

15 A. As I just explained, that he had said he was
16 looking for AS/400 administrator he posted this, he had
17 all that immense stuff on there that I didn't even have
18 any knowledge, very little knowledge or no knowledge
19 of, so I believed that this was a third position that
20 he was hiring an AS/400 administrator with all this
21 extra background is what he was looking for and that
22 was not me.

23 Q. So you didn't think you were qualified with
24 the experience required for the position either?

25 A. Correct.

1 Q. Okay. So, in addition to the FMLA time that
2 you were saying you were not afforded, you're also
3 making a claim that Sumitomo discriminated against you
4 because of disability; right? That's part of your
5 lawsuit?

6 A. Yes.

7 Q. And what, in particular, are you claiming the
8 company did that you considered to be discrimination,
9 based on disability?

10 A. The constant holding my disability against me
11 as a detriment of not being available to work there.
12 He kept saying that he needs somebody for forty hours
13 and that since I'm not there or able to do forty hours
14 all the time that maybe I should look for part-time
15 work. Cutting my hours to thirty in retaliation for
16 asking for FMLA relief to be able to not have the sick
17 time held against me.

18 Q. Anything else?

19 A. I can't think of anything else. Something
20 else may come up, but I can't think of anything right
21 now, because it was attendance he was holding against
22 me because of my migraines. He cut my hours to thirty
23 because of it. He constantly would say that I'm out
24 sick a lot because of it.

25 Q. And that occurred for the entire time that he

1 supervised you; right?

2 A. The comments.

3 Q. According to you; right?

4 A. There was always comments. He was always
5 making a point to say things detrimental about me in
6 relation to my disability of the migraines.

7 Q. So that occurred in 2013 when he started?

8 A. I don't remember if anything in November,
9 December, but, in the February review, it was clearly
10 spelled out.

11 Q. So in 2014 he was raising attendance as an
12 issue; right?

13 A. Yes.

14 Q. And your contract was renewed or the contract
15 with Systems Personnel was renewed for 2015; right?

16 A. Yes.

17 Q. And, in 2015, you continued to have absences,
18 right, and the contract was renewed in 2016; correct?

19 A. Correct.

20 Q. And then at the end of 2016 the company didn't
21 have anymore contractors in the IT area; right?

22 A. Correct, but the comments about not being in,
23 always being out sick, it all continued. It was
24 non-stop. So it's...

25 Q. And the company, if it was concerned about

1 having someone there on a full-time basis, could have
2 asked Systems Personnel to send someone else over and
3 take on that role; right?

4 A. I would agree with that.

5 Q. But it didn't do that; right?

6 A. No, they didn't ask for anybody else, so
7 they...

8 Q. You continued to fill that spot?

9 A. Yes, with myself.

10 Q. One of your other claims is that the company
11 failed to provide reasonable accommodations for
12 disability; right?

13 A. Yes.

14 Q. And that as part of that, you're claiming that
15 the company should have permitted you to have a
16 flexible work schedule; right?

17 A. Correct.

18 Q. And, in fact, for a long time they did that
19 and then in the 2014 to 2015 timeframe they gave you a
20 flex time of thirty hours per week; right?

21 A. I wouldn't really call it flex time, but...

22 Q. You had the ability to work any thirty hours
23 within the normal work week; right?

24 A. Well, it was expected that I would be on
25 Monday if I wasn't sick and work thirty hours through

1 Friday; however that worked out. So it was still that
2 I was expected to be there on Monday through thirty
3 hours. I couldn't say that, okay, I'm going to work
4 Monday, Tuesday, Thursday, Friday this week or
5 whatever. It was really a start to thirty hours.

6 Q. But you could flex it as needed, based on your
7 medical condition; right?

8 A. I'm not really sure if you really call that
9 flex because I had eight hours off during the week and
10 he said it was, if I'm sick, I would be out sick and I
11 would work the fifth day if needed. I'm not really
12 sure if that's really considered flexible because it's
13 still 8:00 to 5:00 and it's flexible on his perspective
14 if he wants me there from 8:00 to 5:00 and he wants to
15 call me on call, it's flexible for him, and if he wants
16 me to work holidays on upgrades it's flexible for him,
17 but there's no --

18 Q. How frequently were you called outside of the
19 normal workday?

20 A. Maybe once a month.

21 Q. And how much time would you spend performing
22 work on those occasions?

23 A. It was usually if the system was down, but,
24 once again, I would have to refer to my logs to give
25 you exact time, but generally if there was a holiday we

1 were working, especially over Thanksgiving and
2 Christmas, we were generally doing upgrades and other
3 things.

4 Q. Were you also claiming that the company should
5 have accommodated you by providing you with the
6 opportunity to work overtime?

7 A. I'm not really sure I understand that, but
8 I'll try and answer it.

9 MR. MILLER: If you don't understand,
10 please don't answer it.

11 BY MS. HEMENWAY:

12 Q. Let me --

13 A. Which paragraph?

14 Q. I'm going to find one that I can point to. So
15 if we take a look at paragraphs 56 through 58 of the
16 Complaint, it says here that, Mr. Rawls, you had been
17 -- well, it says, Mr. Rawls unilaterally ended overtime
18 for the plaintiff as well as flex time. These were
19 both accommodations that had been in place under the
20 previous supervisor.

21 A. That's all in 58?

22 Q. That's in 56.

23 A. Okay.

24 Q. 57 mentions you were accommodated with
25 overtime when needed?

1 A. Because you had said 56, then you went to 58.

2 Q. Yeah, 56 through 58, those three paragraphs.

3 So in here you're mentioning that you had had overtime
4 as an accomodation and that that practice was ended by
5 Mr. Rawls, and I'm asking if it's your contention as
6 part of this lawsuit that the company had an obligation
7 to provide you with a reasonable accomodation in the
8 form of overtime work?

9 A. What this is referencing is the -- when I was
10 with Mr. Papelow, that if I had more than forty hours a
11 week I was able to save that extra time and use it
12 later on on another week that I needed to make up some
13 time for being out sick. There was really a
14 cumulative, the ability to save up some sick time.

15 Q. And is that -- as part of this lawsuit are you
16 claiming that the company should have continued to
17 provide that option to you as a reasonable
18 accomodation?

19 A. Yes, that was an accomodation that I feel
20 could have been continued because it was of really no
21 cost to the company and, basically, if I ended up
22 having 20 hours extra at the end of the contract, that
23 would have been on me as providing extra stuff for the
24 company that I never billed.

25 MS. HEMENWAY: Can I have this marked as

1 Exhibit 6, please?

2 (Whereupon, Exhibit 6, disclosures
3 pursuant to Fed. R. Civ. P. 26(a)(1), was marked for
4 identification.)

5 BY MS. HEMENWAY:

6 Q. Mr. Borders, I'm showing you what's been
7 marked as Deposition Exhibit 6. I ask you to take a
8 minute to review it and then I'll ask you some
9 questions about it, please. If we can take a minute to
10 look at this, do you recognize Exhibit 6?

11 A. Yes.

12 Q. And this is a copy of initial disclosures that
13 were provided by you as part of this lawsuit; right?

14 A. Correct. The only page I'm probably not
15 familiar with is the last one saying that they served.

16 Q. Okay. Fair enough. If we take a look at the
17 first page, this appears to include -- this is
18 actually, first and top of the second page, a list of
19 individuals who may have information about your claims
20 in the lawsuit; right?

21 A. That is correct.

22 Q. So if we start with Jim Cipriani, who's listed
23 on page one as the owner of Systems Personnel. Do you
24 see that?

25 A. Correct.

1 Q. So here you indicate that Mr. Cipriani has
2 knowledge of the discriminatory actions by Kirk Rawls
3 during the time of plaintiff's employ, so during your
4 placement at Goodyear Sumitomo. Do you see that?

5 A. I believe that is correct.

6 Q. So what knowledge do you believe Mr. Cipriani
7 has concerning Mr. Rawls' alleged actions?

8 A. Mr. Cipriani or Jack Hayes were generally in
9 the meetings between myself and the Dunlop IT manager.

10 Q. And, during those meetings, did you discuss or
11 did you in any way indicate that you believed Mr. Rawls
12 was acting in a discriminatory manner towards you?

13 A. I don't believe so.

14 Q. Did Mr. Cipriani or Mr. Hayes ever express to
15 you anything they had observed relative to Mr. Rawls
16 appeared discriminatory?

17 A. No.

18 Q. Did you have any discussions with Mr. Cipriani
19 or Mr. Hayes about what you believed to be
20 discriminatory actions by Mr. Rawls?

21 A. No, I did not.

22 Q. Did you speak to anyone else at Systems
23 Personnel about alleged discrimination by Mr. Rawls or
24 anyone else at Goodyear Sumitomo?

25 A. I think the only person that I may have

1 discussed it with would have been during those lunch
2 meetings with Lynn. I may have went out to lunch with
3 Mr. Cipriani and it may have come up during that, but I
4 can't remember if it did or not.

5 Q. So, looking at the next page, with respect to
6 Jeff Jensen, you indicate that Mr. Jensen may have
7 knowledge of the discriminatory actions by Mr. Rawls
8 during the time of your placement with Goodyear
9 Sumitomo. Do you see that?

10 A. Yes, I do.

11 Q. Did you have any discussions with Mr. Jensen
12 about what you believed to be discriminatory actions by
13 Mr. Rawls?

14 A. I probably did.

15 Q. When do you recall having those discussions?

16 A. I don't recall the time or date, but I'm
17 pretty sure that in talking we would have -- we
18 probably -- I don't believe I ever had an official
19 saying let's have an official meeting. I think it
20 might have just been general conversation talks with
21 Mr. Jensen.

22 Q. Did you have specific discussions with Mr.
23 Jensen about what you believed to be discrimination,
24 based on disability or retaliation for having requested
25 FMLA leave?

1 A. Probably both.

2 Q. Or were these just discussions about how Mr.
3 Rawls, you know, generally treated people in the
4 workplace?

5 A. That was probably also included.

6 Q. Can you remember any of those discussions in
7 any level of detail?

8 A. Not really that I could say, that I could
9 swear that it's absolute fact.

10 Q. Okay. Aside from Dr. -- was it Mechtler at
11 Dent, did you treat with any other physicians for your
12 migraines?

13 A. I did some work at the VA with them.

14 Q. But that you said stopped sometime before the
15 end of 2012?

16 A. Yes.

17 Q. In here, looking at the paragraph under
18 differential treatment on page two, do you see that?

19 A. Okay.

20 Q. You indicate that you have copies of E-mails
21 and letters and copies of job postings from defendant.
22 Do you see that?

23 A. Yes.

24 Q. Do you still have those E-mails and letters
25 and job postings that you're referring to here?

1 A. I may have them.

2 Q. Towards the very bottom of the page you list
3 that, and these, again, are documents that you might
4 rely on. You indicate there are records of plaintiff's
5 request for accomodation. Do you see that?

6 A. Yes.

7 Q. Did you make any requests for accomodation in
8 writing?

9 A. No, I did not.

10 Q. Aside from requesting to use FMLA time in
11 order to have some flexibility your schedule, did you
12 request any other reasonable accommodations from
13 Goodyear or Sumitomo?

14 A. The only accommodations that I would ask for
15 would be the flexible time with regards to the
16 migraines and the other problem I have with the
17 reference to irritable bowel syndrome. I did have to
18 leave work at one time when Mr. Rawls was there because
19 the plumbing wasn't working and there were some
20 bathrooms working on the other end of the plant and I
21 was having an issue and I said, I have to go home.

22 Q. Okay. Were there any occasions where you
23 needed to use a bathroom and you weren't permitted to
24 do so?

25 A. No, but it was brought up front to say that if

1 I get up and walk out of a meeting it's not because I'm
2 just getting up and walking out of a meeting.

3 Q. So, were there any accommodations you
4 requested with respect to the irritable bowel condition
5 that were not granted?

6 A. Not that I can recall. There was a couple
7 incidents that I was driven from the plant during the
8 maintenance that they were doing with the heavy
9 solvents and stuff they were using remodeling the front
10 end. They were driving me out of the building because
11 of the solvents. I had to tell them I had to leave
12 because of that because it was getting to be a migraine
13 so I don't know necessarily if you really call that
14 accomodation, being I'm going to leave or not, but I
15 did have to leave a couple of times because of the
16 fumes.

17 Q. Was there any issue with you doing that; to
18 your knowledge?

19 A. Not that I can recall but I'm -- I could guess
20 he wasn't happy.

21 Q. Did he make any comment to you about it
22 specifically?

23 A. No, not that I'm -- no, not at the time.

24 Q. At any time did he make a comment to you about
25 needing to leave because of the solvents?

1 A. Not that I can recall, but, you know, I wasn't
2 going to press the issue and ask him. From the way I
3 was treated previously, I'm sure it was going to be
4 held against me.

5 Q. When did that occur? When were the solvents
6 being used in the building?

7 A. I don't know. It was when they were doing the
8 remodeling in the front area stuff. They were doing a
9 bunch of lacquering, whatever, with doing and stuff,
10 and the fumes were all throughout the whole front of
11 the building.

12 Q. How many times did you have to leave?

13 A. I believe it was at least two.

14 Q. Just under the -- we were just looking at the
15 records of plaintiff's request for accommodations and
16 just under that you list records of plaintiff's
17 complaint to defendant human resources. Do you see
18 that?

19 A. Yes.

20 Q. Did you make any written complaints to
21 Sumitomo or Goodyear's human resources department
22 regarding Mr. Rawls?

23 A. Well, that would have been just the talk that
24 I had with Linda Walleshauser. She was writing some
25 stuff down so I would assume that could be considered a

1 record.

2 Q. So that the only complaint that you made was
3 to Ms. Walleshauser in August of 2014?

4 A. Correct.

5 MS. HEMENWAY: If we can just take a
6 quick break?

7 (A recess was taken.)

8 MS. HEMENWAY: So I don't have anymore
9 questions at this time. If you think you're going
10 to go longer than twenty minutes, half an hour...

11 MR. MILLER: I don't think it'll take
12 that long.

13 EXAMINATION BY MR. MILLER:

14 Q. Mr. Borders, you were asked at one point if
15 your disability made it impossible for you to do your
16 job. Were you able -- strike all of that. You were
17 asked if you were able to do the job to the best of
18 your ability and you responded no. Do you recall that
19 question?

20 A. Yes, I do.

21 Q. When you say your ability, are you talking
22 about your actual training and ability to do the job?

23 A. No, I was not.

24 Q. What were you referring to?

25 A. That was referring to the incapacity that the

1 migraines were causing of me not being able to focus
2 and concentrate properly to be able to do an
3 outstanding job like I normally do on being able to
4 work on the systems.

5 Q. Are you in any way, shape or form aware of any
6 of the training for Mr. Rawls to be running an IT
7 department?

8 A. No, I do not.

9 Q. Last question. At any time during the period
10 of 2012 to the end of your employment, did anybody at
11 Sumitomo or Goodyear Dunlop ever approach you and ask
12 you to discuss your disabilities in order to see if
13 they could come up with a reasonable accomodation?

14 A. No, they did not.

15 MR. MILLER: I'm done.

16 MS. HEMENWAY: I think we're all set.

17 Thank you.

18 ***12:48 p.m.***

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1 STATE OF NEW YORK

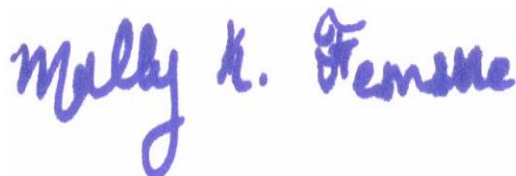
2 COUNTY OF ERIE

3 I, Molly Fenske, a Notary Public in and for the State
4 of New York, do hereby certify:

5 That the witness whose testimony appears herein
6 before was, before the commencement of his deposition,
7 duly sworn to testify to the truth, the whole truth and
8 nothing but the truth; that such testimony was taken
9 pursuant to notice at the time and place herein set forth;
10 that said testimony was taken down in shorthand by me and
11 thereafter under my supervision transcribed into the
12 English language, and I hereby certify the foregoing
13 testimony is a full, true and correct transcription of the
14 shorthand notes so taken.

15 I further certify that I am neither counsel for nor
16 related to any parties to said action, nor in anywise
17 interested in the outcome thereof.

18 IN WITNESS WHEREOF, I have hereunto subscribed my
19 name this 11th day of February, 2019.

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21
22
23
24
25


Notary Public
State of New York

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